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**THE**  
**STUDENT'S STATUTES;**

**BEING THE**

**PRINCIPAL PROVISIONS OF SOME OF  
THE MORE GENERAL**

**ACTS OF PARLIAMENT.**

**WITH**

*Notes of Important Decisions Thereon,*

**ESPECIALLY DESIGNED FOR THE USE OF  
STUDENTS OF ENGLISH LAW.**

**BY**

**JOHN F. HAYNES, LL.D., F.S.Sc.,**

**AUTHOR OF THE "STUDENT'S LEADING CASES;" THE "STUDENT'S  
GUIDE TO PROBATE AND DIVORCE," ETC., ETC.**

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**LONDON:**

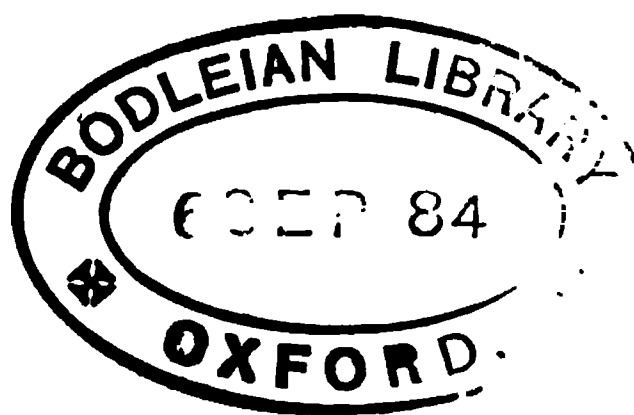
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TO  
THE RIGHT HONOURABLE  
*The Earl of Selborne,*  
LORD HIGH CHANCELLOR OF GREAT BRITAIN,  
THIS WORK  
IS,  
WITH HIS LORDSHIP'S KIND PERMISSION,  
MOST RESPECTFULLY  
DEDICATED.





## EXTRACT FROM THE PREFACE TO THE FIRST EDITION.

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THE author has long noticed the want, on the part of many of the candidates whom he has had the honour of preparing for the Final Examination of the Incorporated Law Society, of that acquaintance with the provisions of even the more important Acts of Parliament, which is, and most justly, expected by the Examiners. This state of things is antecedently probable. To wade through the Statutes at large is a task upon which very few students would dare to venture, or should they be so bold, they would probably ere long find themselves in the position of the "cat in the tripe shop," and "not know where to choose."

To endeavour to supply a want which every student of our law must feel, this attempt has therefore been made, and the author has been much encouraged by the fact that the idea of the work has been approved of by several of the Examiners of the Incorporated Law Society, and by the Examiners in English Law of some of the leading Universities.



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# THE STUDENT'S STATUTES.

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## PART I.

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### STATUTES RELATING TO THE COMMON LAW, THE LAW OF PROPERTY, AND MISCEL- LANEOUS MATTERS.

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#### ACCUMULATION OF PROPERTY.

##### *The Thellusson Act.*

39 & 40 Geo. 3, c. 98.

1. No person shall, after the passing of this Act, settle or dispose of any real or personal property so that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer than (1) the life of any such grantor or settler, or (2) twenty-one years from the death of any such grantor, settler, deviser, or testator; or (3) during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mère* at the time of the death of such grantor, deviser, or testator; or (4) during the minority or respective minorities only of any person or persons who, under the uses or trusts of the instrument directing such accumulations, would, for the time being, if of full age, be entitled to the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated.<sup>(a)</sup>

Periods allowed  
for accumula-  
tion.

Any accumulation directed otherwise shall be null and void <sup>(b)</sup>, and the rents, &c., shall, so long as the same shall be directed to be accumulated contrary hereto, go to such person or persons as

---

(a) Only one of the four periods can be taken: (*Wilson v. Wilson*, 1 Sim. N. S. 288; *Roslyn's Trust*, 16 Sim. 391; *Ellis v. Maxwell*, 3 Beav. 595; *Griffiths v. Vere*, 9 Ves. 126.)

(b) A disposition directing an accumulation for a longer period than allowed by the Act is void only as to the excess, but should it exceed the time allowed for the creation of executory interests, it would be absolutely void: (*Griffiths v. Vere*, *sup.*)

would have been entitled thereto if such accumulation had not been directed.

**Exceptions.**

2. The Act does not extend to provisions for payment of debts, for raising portions for children, or any direction touching the produce of timber or wood.

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## APPORTIONMENT.

### *The Apportionment Act, 1870.*

33 & 34 VICT. c. 35.

**Periodical payments to be apportioned.**

2. After the passing of this Act, rents, annuities, dividends and other periodical payments, in the nature of income (reserved by writing or otherwise), shall be considered as accruing from day to day, and shall be apportionable in respect of time accordingly. (a)

**When apportioned part payable.**

3. The apportioned part of any such rent or other payment shall be payable in the case of a continuing rent or other such payment when the entire portion, of which such apportioned part shall form part, shall become payable, and in the case of a rent or other such payment determined by re-entry, death, or otherwise, when the next entire portion would have been payable if the same had not so determined.

**Recovery of apportioned parts.**

4. All persons and their respective heirs, executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively, provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action.

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(a) The Act applies to a will executed before and confirmed by a codicil executed since the passing of the Act: (*Constable v. Constable*, 11 Ch. D. 681.)

5. In the construction of this Act—

The word “rents” includes rent service, rent charge, and rent seck, and also tithes and all periodical payments or renderings in lieu of or in the nature of rent or tithe.

Interpretation  
of terms

The word “annuities” includes salaries and pensions.

The word “dividends” includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies, whether such payments shall be usually made or declared at any fixed times or otherwise.

6. Nothing in this Act contained shall render apportionable any annual sums made payable in policies of assurance of any description. Exemptions.

7. The provisions of this Act shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place.

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## ASSIGNMENT OF PAY.

*The Naval and Marine Pay and Pensions Act, 1865.*

28 & 29 Vict. c. 73.

4. Any assignment, sale, or contract by an officer, seaman, or marine entitled to any naval pension, or by a person entitled to a pension as the widow of an officer, or to an allowance from the Compassionate Fund, or to any marine half-pay, of or in relation to the same, shall be void.

5. Any assignment, sale or contract of or relating to any pay, wages, bounty money, grants, or other allowances in the nature thereof, payable in respect of services in the navy or marine force to a person being or having been a subordinate officer, seaman, or marine, shall be void.

---

## BANK HOLIDAYS.

*The Bank Holiday Act, 1871.*

34 Vict. c. 17.

1. Easter Monday, the Monday in Whitsun week, the first Monday in August, and the 26th December, if a week day, shall be bank holidays, and bills of exchange and promissory notes due on any such bank holiday shall be payable on the following day.

2. If the day on which notice of dishonour should be given, or

bill or note presented for acceptance, be a bank holiday, such acts may be done on the following day.

3. No person shall be compellable to make any payment or do any act upon bank holidays which he would not be compellable to make or do on Christmas Day or Good Friday.

4. This Act shall apply to special bank holidays by Royal proclamation.

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*The Holidays Extension Act, 1875.*

38 VICT. c. 13.

2. Whenever the 26th December shall fall on a Sunday, the Monday immediately following shall be a holiday under this Act, and also under the 34 Vict. c. 17 : (*sup.*)

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**BILLS OF EXCHANGE, PROMISSORY NOTES,  
AND CHEQUES.**

*An Act to repeal certain Stamp Duties and to grant others in lieu thereof, &c.*

16 & 17 VICT. c. 59.

Provision for  
protection of  
banker.

19. Any draft or order drawn upon a banker for a sum of money payable to order on demand, which shall when presented for payment purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.

---

*Bills of Exchange Act, 1882.*

45 & 46 VICT. c. 61.

**PART I.—Preliminary.**

Interpretation  
of terms.

2. In this Act, unless the context otherwise requires :  
 “Acceptance” means an acceptance completed by delivery or notification.  
 “Action” includes counter-claim and set-off.  
 “Banker” includes a body of persons whether incorporated or not who carry on the business of banking.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

“Person” includes a body of persons whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

## PART II.—*Bills of Exchange.*

### *Form and Interpretation.*

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer. Bill of exchange defined.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill is unconditional.

(4.) A bill is not invalid by reason—

(a.) That it is not dated;

(b.) That it does not specify the value given, or that any value has been given therefor;

(c.) That it does not specify the place where it is drawn or the place where it is payable.

4.—(1.) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill. Inland and foreign bills.

For the purposes of this Act “British Islands” mean any part of the United Kingdom of Great Britain and Ireland, the

islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill, the holder may treat it as an inland bill.

Effect where  
different parties  
to bill are the  
same person.

5.—(1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to  
drawee.

6.—(1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty re-  
quired as to  
payee.

7.—(1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are  
negotiable.

8.—(1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9.—(1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a.) With interest.



(b.) By stated instalments.

(c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

10.—(1.) A bill is payable on demand—

Bill payable on demand.

(a.) Which is expressed to be payable on demand, or at sight, or on presentation ; or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

Bill payable at a future time.

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Omission of date in bill payable after date.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

13.—(1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

Ante-dating and post-dating.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of  
time of payment  
—34 Vict. c. 17.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows :

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace : Provided that—

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day ;

(b.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4.) The term “ month ” in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1.) Negating or limiting his own liability to the holder :

(2.) Waiving as regards himself some or all of the holder's duties.

Definition and  
requisites of  
acceptance.

17.—(1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely :

(a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(b.) It must not express that the drawee will perform his promise by any other means than the payment of money.

18. A bill may be accepted :

(1.) Before it has been signed by the drawer, or while otherwise incomplete :

Time for acceptance,

(2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by nonpayment :

(3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

19.—(1) An acceptance is either (a) general or (b) qualified.

General and qualified acceptances.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(a.) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :

(b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :

(c.) local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

(d.) qualified as to time :

(e.) the acceptance of some one or more of the drawees, but not of all.

20.—(1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

Inchoate instruments.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as

if it had been filled up within a reasonable time and strictly in accordance with the authority given.

**Delivery.**

21.—(1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be :

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of the holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

### *Capacity and Authority of Parties.*

**Capacity of parties.**

22.—(1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

**Signature essential to liability.**

23. No person is liable as drawer, indorser or acceptor, of a bill who has not signed it as such. Provided that

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

**Forged or unauthorised signature.**

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of

the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature, not amounting to a forgery.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. Procuration signatures.

26.—(1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon, but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. Persons signing as agent or in representative capacity.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

### *The Consideration for a Bill.*

27.—(1.) Valuable consideration for a bill may be constituted by— Value and holder for value.

(a.) Any consideration sufficient to support a simple contract;

(b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

28.—(1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Accommodation bill or party.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took

the bill, he knew such party to be an accomodation party or not.

Holder in due course.

29.—(1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions ; namely,

(a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact :

(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30.—(1.) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *primâ facie* deemed to be a holder in due course ; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

### *Negotiation of Bills.*

Negotiation of bill.

31.—(1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill



in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

Requisites of a valid indorsement.

- (1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

- (2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

- (3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

- (4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

- (5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

- (6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Conditional indorsement.

34.—(1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

Indorsement in blank and special indorsement.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35.—(1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a

Restrictive indorsement.

mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of  
overdue or dis-  
honoured bill.

36.—(1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of  
bill to party  
already liable  
thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the  
holder.

38. The rights and powers of the holder of a bill are as follows :

(1.) He may sue on the bill in his own name :

(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

- (3.) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

*General duties of the Holder.*

39.—(1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. When presentment for acceptance is necessary.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40.—(1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time. Time for presenting bill payable at sight.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41.—(1.) A bill is duly presented for acceptance which is presented in accordance with the following rules: Rules as to presentment for acceptance, and excuses for non-presentment.

(a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:

(b.) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

(c.) Where the drawee is dead presentment may be made to his personal representative:

- (d.) Where the drawee is bankrupt, presentment may be made to him or to his trustee :
- (e.) Where authorised by agreement or usage, a presentment through the post office is sufficient.
- (2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
  - (a.) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill :
  - (b.) Where after the exercise of reasonable diligence, such presentment cannot be effected :
  - (c.) Where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42.—(1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43.—(1.) A bill is dishonoured by non-acceptance—

- (a.) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or
- (b.) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44.—(1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment.

45.—Subject to the provisions of this Act a bill must be duly

presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules :—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
- (4.) A bill is presented at the proper place—
  - (a.) Where a place of payment is specified in the bill and the bill is there presented.
  - (b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
  - (c.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
  - (d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for  
delay or non-  
presentment for  
payment.

46.—(1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with,—

(a.) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(b.) Where the drawee is a fictitious person.

(c.) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(e.) By waiver of presentment, express or implied.

Dishonour by  
non-payment.

47.—(1.) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dis-  
honour and  
effect of non-  
notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to  
notice of dis-  
honour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

- (2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
- (3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12.) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

- (a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
- (b.) where the person giving and the person to receive notice

reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

- (13.) Where a bill when dishonoured is in the hands of an agent, he may either give himself notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50.—(1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

- (a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged :
- (b.) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :
- (c.) As regards the drawer in the following cases, namely,
  - (1) where drawer and drawee are the same person,
  - (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment,
  - (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:
- (d.) As regards the indorser in the following cases, namely,
  - (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.



51.—(1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser. Noting of protest of bill.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(a.) When a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(b.) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested:

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder  
as regards  
drawee or  
acceptor.

52.—(1.) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

### *Liabilities of Parties.*

Funds in hands  
of drawee.

53.—(1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of  
acceptor.

54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance :

(2.) Is precluded from denying to a holder in due course :

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

55.—(1.) The drawer of a bill by drawing it—

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
- (b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Liability of  
drawer or in-  
dorser.

(2.) The indorser of a bill by indorsing it—

- (a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
- (b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;
- (c.) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Stranger sign-  
ing bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :

Measure of  
damages  
against parties  
to dishonoured  
bill.

- (1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

- (a.) The amount of the bill :
- (b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case :
- (c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

- (2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

- (3.) Where by this Act interest may be recovered as damages such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transfer by  
delivery.

58.—(1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

### *Discharge of Bill.*

Payment in due  
course

59.—(1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying  
demand draft  
whereon in-  
dorsement is  
forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the  
holder at  
maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

62.—(1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. Express waiver.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

63.—(1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. Cancellation.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

64.—(1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. Alteration of bill.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

#### *Acceptance and Payment for Honour.*

65.—(1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Acceptance for honour *suprà* protest.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour *suprà* protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour :

(b.) be signed by the acceptor for honour :

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of  
acceptor for  
honour.

66.—(1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receive notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to  
acceptor for  
honour.

67.—(1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity ; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for  
honour *suprà*  
protest.

68.—(1.) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprd* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprd* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

### *Lost Instruments.*

69.—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. Holder's right to duplicate of lost bill.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. Action on lost bill.

### *Bill in a Set.*

71.—(1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill. Rules as to sets.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of

the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

### *Conflict of Laws.*

Rules where  
laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided that—

(a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are



determined by the law of the place where the act is done or the bill is dishonoured.

- (4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
- (5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

### PART III.—*Cheques on a Banker.*

73. A cheque is a bill of exchange drawn on a banker payable Cheque defined.  
on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

74. Subject to the provisions of this Act—

- (1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid. Presentment of cheque for payment.
- (2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

75. The duty and authority of a banker to pay a cheque Revocation of banker's authority.  
drawn on him by his customer are determined by—

- (1.) Countermand of payment:
- (2.) Notice of the customer's death.

### *Crossed Cheques. (a)*

76.—(1.) Where a cheque bears across its face an addition General and special crossings defined.  
of—

- (a.) The words “and company” or any abbreviation thereof

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(a) And see 46 & 47 Vict. c. 55, post, Part IV.

between two parallel transverse lines, either with or without the words "not negotiable"; or

(b.) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by  
drawer or after  
issue.

77.—(1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a  
material part  
of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Duties of banker  
as to crossed  
cheques.

79.—(1.) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the

cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection to  
banker and  
drawer where  
cheque is  
crossed.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of cross-  
ing on holder.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Protection to  
collecting  
banker.

#### PART IV.—*Promissory Notes.*

83.—(1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

Promissory  
note defined.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Delivery  
necessary.

85.—(1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

Joint and  
several notes.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

86.—(1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

Note payable on  
demand.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of  
note for pay-  
ment.

87.—(1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of  
maker.

88. The maker of a promissory note by making it—

(1.) Engages that he will pay it according to its tenor;

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of  
Part II. to  
notes.

89.—(1.) Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(a.) Presentment for acceptance;

(b.) Acceptance;

(c.) Acceptance *supra* protest;

(d.) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

#### PART V.—*Supplementary.*

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

91.—(1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. Signature.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning the time, non-business days are excluded. Computation of time.

“Non-business days” for the purposes of this Act mean—

(a.) Sunday, Good Friday, Christmas Day :

(b.) A bank holiday under the Bank Holidays Act 1871 (a), or Acts amending it :

(c.) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting. When noting equivalent to protest.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. Protest when notary not accessible.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for a payment of dividend. Dividend warrants.

97.—(1.) The rules in bankruptcy relating to bills of exchange promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained. Savings—33 & 34 Vict. c. 97—25 & 26 Vict. c. 89.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

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(a) See p. 8.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

- (a.) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue.
- (b.) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint-stock banks or companies :
- (c.) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively :
- (d.) The validity of any usage relating to dividend warrants, or the indorsement thereof.

Construction  
with other  
Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate as if it referred to the corresponding provisions of this Act.

#### FIRST SCHEDULE.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A. B.* [householder], of \_\_\_\_\_ in the county of \_\_\_\_\_, in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the \_\_\_\_\_ day of \_\_\_\_\_, 188\_\_\_\_, at \_\_\_\_\_, demand payment [or acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

(Signed) *A. B.*  
*G. H.* } Witnesses.  
*J. K.* }

*N. B.*—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

#### BILLS OF LADING.

*An Act to Amend the Law relating to Bills of Lading.*

18 & 19 VICT. c. 111.

Rights of consignee or indorsee.

1. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon, or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage *in transitu*, or claim or freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or

indorsee by reason of his being such consignee or indorsee, or of his receipt of the goods by reason of such consignment or indorsement.

3. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.<sup>(a)</sup> Evidence of shipment.

*Proviso* : The master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or holder, or some person under whom the holder claims.

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*The Stamp Act, 1870.*

33 & 34 VICT. c. 97.

56.—(1.) A bill of lading is not to be stamped after the execution thereof. Stamp duty.

(2.) Every person who makes or executes any bill of lading not duly stamped shall forfeit the sum of 50*l*.

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BILLS OF SALE.

*The Stamp Act, 1870.*

33 & 34 VICT. c. 97.

57. A copy of a bill of sale is not to be filed in any court, unless the original, duly stamped, is produced to the proper officer. Stamp duty.

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*The Bills of Sale Act, 1878.*

41 & 42 VICT. c. 31.

2. This Act shall come into operation on the 1st day of January, 1879, which day is in this Act referred to as the commencement of this Act. Commencement.

3. This Act shall apply to every bill of sale executed on or after the 1st day of January, 1879. Application of Act.

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<sup>(a)</sup> The owner is not estopped by the signature of the master from showing that the goods or some of them were never put on board: (*Brown v. Powell, Duffryn, &c., Company*, 32 L. T. 621.)

after the 1st day of January, 1879 (whether the same be absolute, or subject, or not subject, to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately, or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation  
of terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents ; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements<sup>(a)</sup>, transfers, or assignments of any ship, or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or pro-

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(a) *I.e.*, ante-nuptial settlements : (*Fowler v. Foster*, 28 L. J. 210, Q. B.)



perty of incorporated or joint stock companies, nor *choses in action*, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain, or are in or upon, any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

"Prescribed" means prescribed by rules made under the provisions of this Act.

5. From and after the commencement of this Act, trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act. "Trade machinery."

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop.

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers ; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes, or any of them ; that is to say, "Factory or workshop."

(a) In or incidental to the making any article or part of an article ; or,

(b) In or incidental to the altering, repairing, ornamenting, or finishing of any article ; or,

(c) In or incidental to the adapting for sale any article.

Certain instruments giving powers of distress to be subject to this Act.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt, or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Proviso.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament, which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Fixtures and growing crops.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

When subsequent bill of sale void.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or parts thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognisance of the case that the subsequent bill of sale was

*bond fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

10. A bill of sale shall be attested and registered under this Act in the following manner: Attestation and registration.

[(1.) Repealed.]

(2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence (a) and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within *seven clear* days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have

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(a) A misdescription renders the transaction invalid: (*Allen v. Thompson*, 25 L. J. 249, Ex.) But a patent error is not fatal, e.g., where Blackfriars was described as in Middlesex instead of in London: (*Hewer v. Cox*, 30 L. J. 73, Q. B.) Where the grantor was described as "until lately a commercial town traveller or agent," it was held not to be sufficient: (*Castle v. Downton*, 41 L. T. 528.) Where the attesting witness is a person having no occupation, and in his affidavit of execution he has omitted so to state in describing himself, the court will not declare the bill of sale to be void upon the ground that it has not been properly registered: (*Ex parte Young*; *Re Symonds*, 42 L. T. 744.) It is a sufficient description of the occupation of the grantor to set out his substantial occupation only: (*Ex parte National Mercantile Bank*; *Re Haynes*, 43 L. T. 36.)

priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of  
registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The registrar.

13. The masters of the Supreme Court of Judicature attached

to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

14. Any judge of the High Court of Justice, on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration, on such terms and conditions (if any) as to security, notice by advertisement, or otherwise, or as to any other matter, as he thinks fit to direct.

Rectification  
of register.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Entry of satis-  
faction.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts, and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon.

Copies and  
extracts.

17. Every affidavit required by or for the purposes of this Act may be sworn before a Master of any Division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Affidavits.

Whoever wilfully makes or uses any false affidavits for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

18. There shall be paid and received in common law stamps (sic) the following fees, viz. :

On filing a bill of sale.....	2s.
On filing the affidavit of execution of a bill of sale .....	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) .....	5s.

Fees.

19. Section 26 of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Rules.

21. Rules for the purpose of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Days when  
office closed.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of Acts.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

#### SCHEDULE A.

I [A. B.] of do swear that a bill of sale, bearing date the day of 18 [insert the date of the bill], and made between [insert the names and descriptions of the parties in the original bill of sale], and which said bill of sale [or, and a copy of which said bill of sale, [as the case may be] was registered on the day of 18 [insert date of registration], is still a subsisting security.

Sworn, &c.

#### *Bills of Sale Act (1878) Amendment Act, 1882.*

45 & 46 VICT. c. 43.

Commence-  
ment.  
Construction of  
Act.

2. This Act shall come into operation on the 1st Nov. 1882.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this

Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale to have schedule of property attached thereto.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Bill of sale not to affect after-acquired property.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say),

Exception as to certain things.

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:

Bill of sale with power to seize except in certain events, to be void.

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;



(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law :

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Bill of sale to be void unless attested and registered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof ; and shall truly set forth the consideration for which it was given ; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

Form of bill of sale.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

Attestation.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Local registration of contents of bills of sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the County Court registrar in whose district such places are situate,



and if such places are in the districts of different registrars to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the County Court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Bill of sale under 30*l.* to be void.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Chattels not to be removed or sold.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Bill of sale not to protect chattels against poor and parochial rates.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Repeal of part of Bills of Sale Act, 1878.

16. Any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Inspection of registered bills of sale.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Debentures to which Act not to apply.

## SCHEDULE.

## FORM OF BILL OF SALE.(a)

This indenture made the                      day of                      , between *A. B.* of                      of the one part, and *C. D.* of                      of the other part, witnesseth that in consideration of the sum of                      £, now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of                      £, and interest thereon at the rate of                      per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal                      payments of                      £ on the                      day of                      [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.* [*add witness' name, address, and description.*]

## CARRIERS.

*The Carriers Act.*

11 GEO. 4 & 1 WILL. 4, c. 68.

Liability  
restricted to  
10% in certain  
cases.

1. No common carrier by land for hire shall be liable for the loss of or injury to any gold or silver coin of this realm, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or timepieces of any description, trinkets, bills, bank notes of Great Britain or Ireland, orders, notes or securities for payment of money, stamps, maps, writings, title-deeds, paintings(b), engravings, pictures, gold or silver plate, or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs, or lace(c), or any of them, contained in any parcel or package

(a) A bill of sale need not follow the form in the schedule literally, but it must substantially: (*Davis v. Burton*, 48 L. T. 433.)

(b) A "painting" must be a painting in the sense of a work of art, and not one which though valuable in itself, is yet used only for commercial or the like purposes. Whether a painting is within the Act is a question of fact for a jury: (*Woodward v. London and North-Western Railway Company*, 38 L. T. 321; 47 L. J. 263, Ex.)

(c) See 28 & 29 Vict. c. 94, *infra*.

which shall have been delivered either to be carried for hire, or to accompany the person of any passenger in any mail or stage coach, or other public conveyance, where the value of such property shall exceed 10*l.*, unless at the time of the delivery thereof at the receiving house of such carrier, or to his servant, for the purpose of being carried, or of accompanying any passenger as aforesaid, the value and nature of such property shall have been declared by the person sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same be accepted by the receiver.

2. When a parcel containing any of the above-specified articles shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed 10*l.*, an increased rate of charge may be demanded, to be notified by a notice fixed in legible characters in some conspicuous part of the receiving house. (a) Increased rate of charge.

3. The person receiving such increased rate of charge shall, if thereto required, give a receipt, not liable to stamp duty, acknowledging the parcel to have been insured. If such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the carrier shall not have the benefit of this Act, but shall be liable as at the common law, and liable to refund the increased rate of charge. Receipt for increased rate.

4. The publication of notices shall not affect the liability of carriers as to goods conveyed by them other than such in respect of which they may be entitled to the benefit of this Act. Effect of notice.

5. For the purposes of this Act every office, warehouse, or receiving house, used for receiving parcels to be conveyed as aforesaid, shall be deemed a receiving house, and any one or more of such common carriers shall be liable to be sued by his name only, and no action for loss or injury to any parcel or person shall abate for non-joinder of any co-proprietor or co-partner. "Receiving house."

6. Nothing in this Act shall annul or affect any special contract for the conveyance of goods. Special contract.

7. Where parcels in respect of which such increased charges have been paid shall have been lost or damaged, such charges may be recovered in addition to the value of the parcel. Recovery of increased charges.

8. This Act shall not protect carriers from liability to answer for loss or injury to goods arising from the felonious acts of their servants, nor to protect such servants from liability for loss or injury occasioned by their own neglect or misconduct. (b) Felonious acts.

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(a) The characters of the writing must be so large that a person delivering goods cannot fail to read it except through gross negligence: *Clayton v. Hunt*, 3 Camp. 27; *Butler v. Heane*, 2 Camp. 415.)

(b) If a carrier enters into a sub-contract with other parties respecting goods he has undertaken to carry, the servants of the latter are deemed to be in the employ of the carrier within this section: *Machu v. London and South-Western Railway Company*, 2 Ex. 415.)

Proof of value.

9. Carriers shall be entitled to require from the party suing in respect of loss or injury, proof of the actual value of the contents of the parcel, by the ordinary legal evidence, and shall only be liable accordingly, together with such increased charges as aforesaid.

Payment into court.

10. In actions against carriers for loss of or injury to goods, the defendant may pay money into court with the same effect as in other actions.

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*The Railway and Canal Traffic Act, 1854.*

17 & 18 VICT. c. 31.

Liability for loss or injury to animals or goods.

7. Every railway and canal company shall be liable for the loss of or injury (a) to horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability, every such notice, &c., being hereby declared to be null and void, provided that nothing herein contained shall prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, goods, &c., as shall be adjudged by the court or judge before whom any question relating thereto shall be tried, to be just and reasonable.

No greater damages shall be recovered for the loss of or injury to any of such animals beyond the following sums :

For any horse ..... £50

For any neat cattle, per head ..... 15

For sheep or pigs, per head ..... 2

unless the person sending or delivering the same shall at the time have declared them to be of higher value, in which case the company may demand and receive for the increased risk a reasonable per-centage upon the excess, and which shall be paid in addition to the ordinary rate of charge.

The proof of the value of such animals, goods, &c., and the amount of injury done, shall lie upon the person claiming compensation.

No such special contract between such company and any other party shall be binding unless signed by such party, or by the person delivering such animals, goods, &c.

This Act shall not alter or affect the rights, privileges, or liabilities, of any such company under the Carriers Act (11 Geo.

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(a) "Injury" includes deterioration of cattle from want of food or water: (*Allday v. Great Western Railway Company*, 34 L. J. 5, Q. B.)

4 & 1 Will. 4, c. 68), with respect to articles of the description therein mentioned.

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*The Carriers Act Amendment Act, 1865.*

28 & 29 VICT. c. 94.

By this Act the term "lace" in the 11 Geo. 4 & 1 Will. 4, c. 68, is not to include machine-made lace.

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CHARITABLE USES.

*An Act to restrain the Disposition of Lands, whereby the same become inalienable.*

9 GEO. 2, c. 36.

(*Mortmain Act.*)(a)

1. No lands, tenements, rents, or other hereditaments, corporeal, or incorporeal, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or other personal estate to be laid out or disposed of in the purchase thereof, shall be given, granted, aliened, limited, released, transferred, assigned, appointed, or any ways conveyed or settled, to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever in trust or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds), be made by deed, sealed, and delivered in the presence of two or more credible witnesses, ~~twelve~~ <sup>twelve</sup> calendar months at least before the death of such donor or grantor (including the days of execution and death), and be enrolled in Chancery within six calendar months next after the execution thereof; and unless such stocks be duly transferred six

No lands, &c., to be given for charitable uses but by deed twelve months before death of donor, &c.

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(a) The Act extends to all property which savours of the realty, e.g., the unpaid premium of a lease (*Shepherd v. Beetham*, 6 Ch. Div. 597); money due on mortgage, even if the mortgage be for a term (*Attorney-General v. Calhwell*, Amb. 635); a vendor's lien for unpaid purchase-money (*Harrison v. Harrison*, 1 Russ. & M. 71); the proceeds of sale of real estate (*Jeffereys v. Alexander*, 31 L. J. 9, Ch.); leaseholds (*Attorney-General v. Greaves*, Amb. 155). But the Act does not extend to arrears of rent (*Edwards v. Hall*, 6 De G. M. & G. 74); nor to shares in a trading company holding real estate for the purpose of its business (*Linley v. Taylor*, 1 Giff. 67; *Myers v. Perigall*, 2 De G. M. & G. 599); nor to debenture stock, the nature of which is regulated by the "Companies Clauses Act, 1863" (*Attree v. Howe*, 9 Ch. Div. 337). And see other decisions on the Act in "The Student's Leading Cases," pp. 155, et seq.

calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession, for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or any person claiming under him.

2. The said respective enactments as to sealing, &c., deeds, and transfer of stock within twelve and six months, shall not extend to any purchase or transfer made *bond fide* for full and valuable consideration paid at or before the making of such conveyance or transfer, without fraud or collusion.

Gifts made  
otherwise, void.

3. Gifts, &c., in trust for charitable uses made in any other manner than as by this Act directed, shall be absolutely null and void.

Non-application.

4. The Act is not to apply to prejudice gifts to Oxford and Cambridge Universities, or to the Colleges of Eton, Winchester, or Westminster; but—

Proviso as to  
colleges.

5. No college shall hold more advowsons than shall be equal to one moiety of fellows, or where no fellows, to one moiety of students upon the foundation, except advowsons which are annexed to or given for the benefit of the headships of such colleges.

### *The Charitable Trusts Act, 1853.*

16 & 17 VICT. c. 137.

An Act appointing “The Charity Commissioners for England and Wales,” and conferring upon them certain powers as therein mentioned.

Notice before  
proceedings.

17 and 18. Before the commencement of legal proceedings as to any charity by any person, except the Attorney-General, notice shall be given to the board as mentioned in the Act; but this enactment shall not extend to proceedings in which property is claimed, or relief sought adversely to any charity; and—

19. The board may, on the report of an inspector, authorise the proceedings, although such notice be not given.

Proceedings by  
Attorney-  
General.

20. Where it appears to the board that proceedings are requisite or desirable with respect to any charity, the case may be certified to the Attorney-General, who (if he think fit) shall institute such proceedings as he shall consider requisite.

Improvements.

21. The board may sanction the granting of building and other leases, the working of mines, the doing of repairs, and making of improvements by the trustees of any charity, and may authorise the application of the charity funds or the raising of money on mortgage for those purposes.

23. Power to the board to sanction a compromise of claims on Compromise. behalf of [or against (a)] any charity.

24. The board may, under special circumstances, authorise a Sale and exchange. sale or exchange of charity lands, and—

25. May authorise the redemption of rent-charges.

27. Trustees of charities may, with the sanction of the board, Purchase from persons under disability. purchase sites for a house or building for the purposes of the charity from owners under disability, or where, by reason of a defect in the title, a perfect assurance cannot be made, according to the provisions of the Lands Clauses Consolidation Act, 1845.

28. In cases of charities, the incomes of which exceed 30*l.* per Jurisdiction. annum, the Master of the Rolls and the Vice-Chancellors, upon applications to them at chambers, shall have the same jurisdiction as the Court of Chancery or the Lord Chancellor now has in a suit, or upon petition; but the Master of the Rolls, or either of the Vice-Chancellors, may, on any such application, direct that an information, bill, or petition, be filed or presented, as the case may require. (b)

32. The County Courts are to have jurisdiction where the County Courts. income does not exceed [50*l.*], but—

35. The board may direct such applications to be made before a judge of the [Chancery Division] in the first instance.

36. No order of a County Court for the appointment or removal of trustees, or approval of any scheme for regulating or directing the administration of any charity, shall be valid unless confirmed by the board.

37. The board, if dissatisfied with the order of the County Court, may remit the case for reconsideration, or transfer the same to a judge of the [Chancery Division].

39 and 40. As to appeal and proceedings thereon.

41. No judge of the [Chancery Division] or a County Court, Title. shall, upon any proceedings under this Act, have jurisdiction to try the title to real or personal property, as between the charity and the person claiming such property, or to try any question as to the extent of any charge or trust.

42. Such notice in such form and manner as the board shall Notice of scheme, &c. direct, shall be given before any application for the establishment or alteration of a scheme, or the appointment or removal of trustees.

43. Applications under this Act may be made by (1.) Applications. The Attorney-General; (2.) The trustees of the charity, or any one of them; (3.) Two or more inhabitants of the parish.

62. This Act shall not extend to the Universities of Oxford, Exemptions.

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(a) 18 & 19 Vict. c. 124, s. 31.

(b) But in case of a London charity, the income need not exceed 30*l.* (sect. 30).



Cambridge, London, or Durham, or to places of worship; nor otherwise as in this section mentioned, but—

Disputes may  
be referred.

64. Disputes among members of exempted charities may be referred to the arbitration of the Commissioners by two-thirds of the members at a meeting convened for that purpose.

### *The Literary and Scientific Institutions Act, 1854.*

17 & 18 VICT. c. 112.

Land not ex-  
ceeding one  
acre may be  
given under Act.

1. Any person having the present beneficial interest in freehold or copyhold lands may grant, convey, or enfranchise, by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceeding one acre of such land, whether built upon or not, as a site for any such institution as hereinafter described.

No such grant made by a tenant for life shall be valid, unless the remainderman, if one, and if legally competent, join in such grant.

Where any waste or commonable land shall be gratuitously conveyed by any lord of a manor for any such purpose, the rights of commoners shall be barred.

Cesser of usage.

4. Upon any land so granted by way of gift ceasing to be used for the purposes of the institution, the same shall revert, except that if the institution be removed, the land may be exchanged or sold for the benefit thereof.

Equitable  
owners.

5. Any person equitably entitled, but not having the legal estate, may convey for the purposes of this Act without the concurrence of the trustee or trustees; and land belonging to or vested in any infant or lunatic may be conveyed by his guardian or committee.

10. Any number of sites, not exceeding one acre each, may be granted for separate institutions.

Death of  
grantor.

14. The death of the grantor within twelve months from the execution of the deed shall not invalidate the same if otherwise lawful.

Application of  
Act.

33. The Act shall apply to every institution for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms, for general use among the members, or open to the public, of public museums and galleries of works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs, except the Royal Institution and the London Institution for the advancement of literature and the diffusion of useful knowledge.



*The Charitable Trusts Amendment Act, 1855.*

18 &amp; 19 VICT. c. 124.

16. The acting trustees of every charity, or the majority of them (not being less than three persons), shall have power to grant all such leases of land belonging to the charity, and vested in the official trustee of charity lands, as they would have power to grant in the due administration of the charity if such land were legally vested in themselves.

Leases of  
charity lands.*The Charitable Trusts Act, 1860.*

23 &amp; 24 VICT. c. 136.

2. The Board of Charity Commissioners shall have power, on the application of any person or persons authorised to apply by 16 & 17 Vict. c. 137, s. 43, to make orders for the appointment or removal of trustees of any charity, or other officer thereof, or for or relating to the assurance, transfer, payment, or vesting, of any real or personal estate belonging thereto, or for the establishment of any scheme for the administration of any such charity.

Appointment  
and removal of  
officers.

3. Previously to exercising such jurisdiction, the board shall give notice thereof to the trustees of the charity.

4. Such jurisdiction shall not be exercised with respect to charities whose income exceeds 50*l.* except upon application of the trustees thereof, or a majority of them.

5. The board shall not exercise jurisdiction in cases which they consider more fit to be adjudicated on by any of the judicial courts.(a)

8. Power to appeal against the orders of the board, to the [Chancery Division].

*An Act to Amend the Law relating to the Conveyance of Lands for Charitable Uses.*

24 VICT. c. 9.

1. No deed or assurance hereafter to be made for any charitable uses, of hereditaments of any tenure or any estate or interest therein, shall be void within the meaning of 9 Geo. 2, c. 36, by reason of the same not being indented, nor by reason of the same or any deed forming part of the same transaction, containing any grant or reservation of a nominal rent, or of any mines, or minerals, or easement, or any covenants as to erection or

Reservation of  
nominal rent,  
mines, &c.

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(a) This section leaves a discretion to the board, and does not prevent them from exercising their jurisdiction in contentious cases, if they think fit: (*Re Burnham National Schools*, 17 Eq. 241.)

repair of buildings, the formation or repair of streets or roads, drainage, or nuisances, or covenants or provisions of the like nature, for the use and enjoyment as well of the hereditaments comprised in such deed or assurance as of any other adjacent or neighbouring hereditaments, or any right of entry on non-payment of any such rent or on breach of any such covenant or provisions, or any stipulations of the like nature, for the benefit of the donor or grantor, or any person claiming under him, nor (in case of assurances of hereditaments of copyhold tenure), by reason of the same not being by deed, nor in the case of such assurances made *bond fide* on a sale for full and valuable consideration, by reason of the same consisting wholly or partly of a rentcharge or other annual payment, provided that the donor, grantor, or vendor shall reserve the same benefits for his representatives as for himself.

Rentcharge.

Enrolment.

2. In future cases, where the charitable uses of any deed shall be declared by any separate or other deed or instrument, the latter shall be enrolled in Chancery within six months after making the same, instead of such first mentioned deed, otherwise such first-mentioned deed shall be void.

3. No deed heretofore made, and under which possession is now held, for any charitable uses, of any hereditaments of any tenure, or any estate or interest therein, made *bond fide* for a full and valuable consideration, paid at or before the making thereof, or reserved by way of rent or other annual payment, or partly paid and partly reserved as aforesaid, without fraud or collusion, shall be deemed null and void within the meaning of 9 Geo. 2, c. 36, if such deed was made to take effect in possession for the charitable uses intended, immediately from the making thereof, and without power of revocation, and has been at any time prior to the passing of this Act, or shall be within twelve calendar months thereafter, enrolled in Chancery.

4. Where the charitable uses of any deed made for conveyance of any hereditaments for any charitable uses upon full and valuable consideration, and under which possession is now held for such uses, have been declared by any separate or other deed or instrument, and such separate deed only has been enrolled, such enrolment shall be sufficient, but if neither of such deeds has been enrolled, then such separate deed shall be enrolled within twelve calendar months after the passing of this Act, otherwise such first-mentioned deed shall be void.

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*An Act to extend the Time for making Enrolments  
under the 24 Vict. c. 9.*

25 VICT. c. 17.

Extent of 24  
Vict. c. 9.

2. The 24 Vict. c. 9, comprises and extends to all heredita-

ments, whether of freehold or copyhold tenure, and to every estate and interest therein.

5. In all cases in which money shall have been really and *bond fide* expended before the passing of this Act in the substantial and permanent improvement by building or otherwise for any charitable use of land of any tenure whatsoever of which possession is now held by virtue of any assurance conveying or purporting to convey the same, or declaring any trusts or trust thereof for such charitable use, all money so expended shall be deemed, for the purposes of the said Act, equivalent to money actually paid by way of consideration for the purchase of the said land. Money laid out in improvements.

6. Nothing herein shall extend to render void any assurance already valid.

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*An Act to further Amend the Law relating to the Conveyance of Land for Charitable Uses.*

26 & 27 VICT. c. 106.

After reciting the 24 Vict. c. 9, and the 25 Vict. c. 17, it is enacted—

1. Every assurance by which any land shall have been demised for any term of years for any charitable use, shall, for all the purposes of the said recited Acts, be deemed to have been made to take effect for the charitable use thereby intended immediately from the making thereof, if the term for which such land shall have been thereby demised was thereby made to commence and take effect in possession at any time within one year from the date of such assurance. Taking effect of demises for charitable uses.

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*An Act to further extend the Time for making Enrolments under the 24 Vict. c. 9.*

27 VICT. c. 13.

3. In every case in which it may be impossible to enrol the original deed creating a charitable trust, by reason of the same having been lost or destroyed by time or accident, but nevertheless, the trusts of such charity sufficiently appear by some subsequent deed appointing new trustees or otherwise reciting the trusts created by the original deeds, any trustee or other person interested in such trust may apply by summons to the [Chancery Division] for an order authorising the enrolment of such subsequent deed; and if the court shall be satisfied that such original deed has been lost or destroyed by time or accident, but that the trusts sufficiently appear by such subsequent deed, it may authorise the enrolment of such subsequent deed; and Provision where deed lost or destroyed.

such enrolment shall have the same effect as the enrolment of the original deed would have had.

Rent a valid  
consideration  
within 9 Geo. 2,  
c. 36.

4. Every full and *bond fide* valuable consideration within the meaning of the 24 Vict. c. 9, s. 1, which shall consist either wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, shall for the purposes of 9 Geo. 2, c. 36, be as valid, and have the same effect, as if such consideration had been a sum of money actually paid at or before the making of such conveyance, without fraud or collusion.

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### *Charitable Trust Deeds Enrolment Act.*

29 & 30 VICT. c. 57.

Enrolment after  
time gone by.

By this Act the [Chancery Division] if satisfied that such deed was made *bond fide* for full and valuable consideration, may make an order as therein mentioned authorising the enrolment thereof, although the time limited for that purpose has gone by; or where such deed has been lost or destroyed by time or accident, and the trusts thereof sufficiently appear by some subsequent deed, may make an order authorising the enrolment of such subsequent deed. The deed or subsequent deed must be enrolled within six months from the date of the order.

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### *Religious, &c., Building (Sites) Act.*

31 & 32 VICT. c. 44.

Exemption from  
Mortmain Act  
of certain grants  
for buildings for  
religious, &c.,  
purposes.

1. Grants, conveyances, leases, or other dispositions, except by will, *bond fide* made after the passing of this Act, to a trustee or trustees for religious purposes, or for the promotion of education, arts, literature, science, or other like purposes, of land for the erection of buildings for such purposes, or whereon buildings used or intended to be used for such purposes shall have been erected, shall be exempt from the Mortmain Act, and also from sect. 2 of the 24 Vict. c. 9. Provided that such disposition shall have been made for valuable consideration actually paid upon or before the making of the same, or reserved by way of rent or annual payment, or partly paid and partly reserved, without fraud or collusion; and provided such land do not exceed two acres in each case.

2. The trustees may at any time cause such disposition to be enrolled in Chancery.

3. It shall no longer be necessary to acknowledge deeds in order to be enrolled in Chancery.

*The Charitable Trusts Act, 1869.*

32 &amp; 33 VICT. c. 110.

4. A notice under sect. 3 of 23 & 24 Vict. c. 136 (p. 53) need not be sent by the Charity Commissioners to any trustee or administrator of a charity who has been party or privy to the application to the board upon which they exercise their jurisdiction. Notice under s. 3 of 23 & 24 Vict. c. 136.

5. An application to the board of Charity Commissioners, for the purposes of the Charitable Trusts Acts, 1853 to 1869, when made by the trustees or persons acting in the administration of the charity, may be made in writing, signed by any person authorised in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question. Applications to board.

6. Powers of board on application.

8. As to discharge of order of board for irregularity.

9. As to employment of persons to prepare and defend scheme.

10 and 11. As to appeals under sect. 8 of the Charitable Trusts Act, 1860. Appeals.

12. Where the trustees or persons acting in the administration of any charity have power to determine upon any sale, exchange, partition, mortgage, lease, or other disposition of any property of the charity, a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question, shall have full power to execute and do all such assurances, acts, and things as may be requisite for carrying any such sale, &c., into effect, and all such assurances, acts, and things shall have the same effect as if they were respectively executed and done by all such trustees or persons for the time being and by the official trustee of charity lands. Powers of trustees, &c.

13. The majority of the trustees of any charity, if authorised by the board, may institute and maintain any action or other proceeding as if they were the sole trustees of the charity. Proceedings by trustees.

Where the trustees, or the majority of the trustees of any charity institute and maintain any action or other proceeding under the authority of the board, such action or other proceeding shall not abate or become discontinued or of no effect by reason of the death or removal from office of any of the trustees, or of the addition of any new trustee.

14. As to application by exempted charities to have the benefit of the Charitable Trusts Acts, 1853 to 1869, or any of the provisions thereof. Exempted charities.

*Charitable Funds Investment Act.*

33 &amp; 34 VICT. c. 34.

1. Corporations and trustees holding money in trust for any public or charitable purpose, may invest the same in real securi- Investment of charity funds.

ties authorised by, or consistent with the trust, without being deemed to have become possessed of any land within the meaning of the laws relating to mortmain.

Where equity of redemption liable to foreclosure.

2. In every case in which the equity of redemption of premises comprised in any such security shall become liable to foreclosure, or otherwise barred or released, the same shall be thenceforth held in trust to be sold, and shall be sold accordingly; and if any decree shall be made in any suit for redeeming or enforcing such security, such decree shall direct a sale (in default of redemption) and not a foreclosure.

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*The Public Parks, Schools, and Museums Act, 1871.*

34 VICT. c. 13.

Certain gifts of land to be valid.

4. Gifts and bequests by deed, will, or codicil, of land, or money to be laid out in land, for a public park, school-house for an elementary school, or a public museum, shall be valid, notwithstanding the Mortmain Act.

Enrolment.

5. All such gifts and bequests, not made for valuable consideration, shall be made *twelve* months before the donor's death, and be enrolled in the books of the Charity Commissioners within *six* months after the instrument creating the same comes into operation.

Limits allowed.

6. Limits beyond which land may not be given by will or codicil: For *one* public park, 20 acres; for *one* public museum, 2 acres; for *one* school-house, 1 acre.

Saving clause.

7. Nothing in this Act shall invalidate any gift or assurance which would have been valid if this Act had not passed.

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*The Charitable Trustees Incorporation Act, 1872.*

35 & 36 VICT. c. 24.

Trustees may apply to be incorporated.

1. After the passing of this Act the trustees of any charity for religious, educational, scientific, or public charitable purposes, may apply in the manner mentioned in the Act to the Charity Commissioners for a certificate of registration of such trustees as a corporate body, and the commissioners may, if they think it expedient, grant the same subject to such conditions or directions as they shall think fit to insert therein relating to the qualifications and number of the trustees, their tenure, or avoidance of office, the mode of appointing new trustees, and the custody and use of the common seal.

Effect of incorporation.

Such trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession, and a common seal, of which the device shall be approved by the commissioners, and power to sue and be sued in

their corporate name, and to hold and acquire, notwithstanding the statutes of mortmain, and by instruments under their common seal to convey, assign, and demise any present or future property, real or personal, belonging to such charity, in such manner as such trustees might without incorporation hold or acquire, convey, assign, or demise the same, for the purposes of such charity.

Nothing in this Act shall extend, modify, or control any of the provisions of the 9 Geo. 2, c. 36, or make valid any gift, grant, or purchase which would be invalid thereunder. Saving clause.

5. After incorporation, and notwithstanding the same, the trustees shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, as if no incorporation had been effected, and the commissioners shall continue to have the same control over them as if not incorporated. Liability after incorporation.

11. Every contract made or entered into by the trustees, which would be valid according to the rules of the charity if no such incorporation had taken place, shall be valid, although not made or entered into under the common seal. Contracts.

13. If the clerk of enrolments for the time being shall be satisfied, by affidavit or otherwise, that the deed, assurance, or other instrument conveying or charging the hereditaments, estate, or interest for charitable uses, was made really and *bonâ fide* for full and valuable consideration actually paid at or before the making or perfecting thereof, or reserved by way of rent-charge or other annual payment, or partly paid at or before the making or perfecting of such deed, assurance, or other instrument, and partly reserved as aforesaid, without fraud or collusion, and that at the time of the application to the said clerk of enrolments, possession, or enjoyment is held under such deed, assurance, or other instrument, and that the omission to enrol the same in proper time has arisen from ignorance or inadvertence, or from the destruction thereof by time or accident, it shall be lawful for the said clerk of enrolments to enrol the deed, assurance, or instrument to which the application relates, or such a subsequent deed as mentioned in the 29 & 30 Vict. c. 57 (p. 56), as the case may be, and the same shall thereupon be enrolled accordingly. A fee of 10s. must be paid beyond the ordinary fee for enrolment. Enrolment where deed lost or not enrolled.

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## CHURCH AND CLERGY.

*Resignation Bonds.*

9 GEO. 4, c. 94.

Certain en-  
gagements to  
resign livings  
valid.

1. Engagements entered into *bonâ fide* for the resignation of an ecclesiastical benefice to the intent or purpose, to be manifested by the terms of such engagement, that any *one* person, to be specially named and described therein, being such persons as are mentioned in sect. 2, shall be presented or appointed to such benefice, or that the same shall be given to him, shall be valid, and the performance thereof may be enforced in equity. *Proviso*: Such engagement shall be entered into before the presentation of the party so entering into the same.

Relationship.

2. Where two persons shall be so named and described in such engagement, each of them shall be either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron, or of one of the patrons not being merely a trustee of the patronage or of the person for whom the patron shall be a trustee, or by whose direction or in whose right such presentation shall be intended to be made, or of any married woman whose husband in her right shall be the patron or one of the patrons..

Deposit of  
instrument.

4. One part of the instrument by which such engagement shall be made is to be deposited with the registrar of the diocese, within two calendar months from its date.

When resigna-  
tion void.

5. Every resignation made in pursuance of such engagement shall refer to the same, and state the name of the person for whose benefit it is made. The resignation shall be void unless such person be presented within six calendar months after notice of resignation shall have been given to the patron or patrons.

Application of  
Act.

6. The Act is only to apply to cases where the patron holds the living as private property.

*An Act to abridge the Holding of Benefices in Plurality,  
and to make better Provision for the Residence of  
the Clergy.*

1 &amp; 2 VICT. c. 106.

Clergy may not  
trade, &c.

29. No spiritual person beneficed or licensed to perform ecclesiastical duty shall engage in trade or dealings for gain or profit, unless such trade or dealing shall be carried on by any number of partners exceeding six, or in case such trade or dealing devolve upon him by devise, bequest, inheritance, intes-



tacy, settlement, marriage, or bankruptcy; but in no case shall he act as a director or carry on such trade or dealing in person.

30. Spiritual persons may keep schools and act as tutors, and Exceptions.  
may

Buy and sell in relation thereto.

Buy and sell for household purposes.

Dispose of books or other works to a publisher.

Be managers, &c., of benefit, fire, or life assurance societies.

Buy and sell cattle and corn in respect of their own lands, and sell minerals produced therefrom, but not transact business in person in a market or place of public sale.

31. Any spiritual person trading or dealing contrary to this Act may be suspended, and for offending the third time, deprived of his benefice.

### *The Incumbent's Resignation Act, 1871.*

34 & 35 VICT. c. 44.

Under the circumstances mentioned in this Act, clergymen who are incapacitated from performing their duties are enabled to resign their benefices, and retire on a moderate pension chargeable on the living.

### *The Burial Laws Amendment Act, 1880.*

43 & 44 VICT. c. 41.

1. After the passing of this Act any relative, friend, or legal representative having the charge of or being responsible for the burial of a deceased person may give *forty-eight hours* notice in writing, indorsed on the outside "Notice of Burial," to, or leave or cause the same to be left at the usual place of abode of the rector, vicar, or other incumbent, or in his absence the officiating minister in charge of any parish or ecclesiastical district or place, or any person appointed by him to receive such notice, that it is intended that such deceased person shall be buried within the churchyard or graveyard of such parish or ecclesiastical district or place, without the performance, in the manner prescribed by law, of the service for the burial of the dead according to the rites of the Church of England; and after receiving such notice no rector, vicar, incumbent, or officiating minister shall be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid. Such notice shall be in writing plainly signed with the name and stating the address of the person giving it, and shall be in the form or to the effect of Schedule (A) annexed to this Act.

After passing of Act, notice may be given that burial will take place in churchyard or graveyard without the rites of the Church of England.

The word "graveyard" in this Act shall include any burial

ground or cemetery vested in any burial board, or provided under any Act relating to the burial of the dead, in which the parishioners or inhabitants of any parish or ecclesiastical district have rights of burial; and in the case of any such burial ground or cemetery, if a chaplain is appointed to perform the burial service of the Church of England therein, notice under this Act shall be addressed to such chaplain, but the same shall be given to or left at the office of the clerk of the burial board if any, in whom any such burial ground or cemetery may be vested: Provided also, that it shall be lawful for the proprietors or directors of any proprietary cemetery or burial ground to make such bye-laws or regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of this Act, any enactment to the contrary notwithstanding.

Paupers.

2. Such notice, in the case of any poor person deceased, whom the guardians of any parish or union are required or authorised by law to bury, may be given to the rector, vicar, or other incumbent in manner aforesaid, and also to the master of any workhouse in which such poor person may have died or otherwise to the said guardians by the husband, wife, or next of kin of such poor person, who, for the purposes of this Act, shall be deemed to be the person having the charge of the burial of such deceased poor person; and in any such case it shall be the duty of the said guardians to permit the body of such deceased person to be buried in the manner provided by this Act.

Time of burial  
to be stated,  
subject to  
variation.

3. Such notice shall state the day and hour when such burial is proposed to take place, and in case the time so stated be inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or on account of any bye-laws or regulations lawfully in force in any graveyard limiting the times at which burials may take place in such graveyard, the person receiving the notice shall, unless some other day or time shall be mutually arranged within *twenty-four hours* from the time of giving or leaving such notice, signify in writing, to be delivered to or left at the address or usual place of abode of the person from whom such notice has been received, or at the house where the deceased person is lying, at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day shall be a Sunday, Good Friday, or Christmas Day) of the day next following, such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place, at the hour so appointed or mutually arranged, and in other respects in accordance with the notice: Provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of

ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October and the first day of April: Provided also, that no such burial shall take place in any churchyard on Sunday, or on Good Friday or Christmas Day, if any such day being proposed by the notice shall be objected to in writing for a reason assigned by the person receiving such notice.

4. When no such intimation of change of hour is sent to the person from whom the notice has been received, or left at the house where the deceased person is lying, the burial shall take place in accordance with and at the time specified in such notice. Burial to take place accordingly.

5. All regulations as to the position and making of the grave which would be in force in such churchyard or graveyard in the case of persons interred therein with the service of the Church of England shall be in force as to burials under this Act; and any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled, in case of a burial under this Act, to receive the like fee in respect thereof. Regulations and fees.

6. At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place. The burial may take place, at the option of the person so having the charge of or being responsible for the same as aforesaid, either without any religious service, or with such Christian and orderly religious service at the grave, as such person shall think fit; and any person or persons who shall be thereunto invited, or be authorised by the person having the charge of or being responsible for such burial, may conduct such service or take part in any religious act thereat. The words "Christian service" in this section shall include every religious service used by any church, denomination, or person professing to be Christian. Burial may be with or without religious service.

7. All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or Conduct of burials.

denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanour.

Powers for  
prevention of  
disorder.

8. All powers and authorities now existing by law for the preservation of order, and for the prevention and punishment of disorderly behaviour in any churchyard or graveyard, may be exercised in any case of burial under this Act in the same manner and by the same persons as if the same had been a burial according to the rites of the Church of England.

Act not to give  
right of burial  
where no pre-  
vious right  
existed.

9. Nothing in this Act shall authorise the burial of any person in any place where such person would have had no right of interment if this Act had not passed, or without performance of any express condition on which, by the terms of any trust deed, any right of interment in any burial ground vested in trustees under such trust deed, not being the churchyard or graveyard, or part of the churchyard or graveyard, of the parish or ecclesiastical district in which the same is situate, may have been granted.

Burials under  
Act to be re-  
gistered.

10. When any burial has taken place under this Act the person so having the charge of or being responsible for such burial as aforesaid shall, on the day thereof, or the next day thereafter, transmit a certificate of such burial, in the form or to the effect of schedule (B.) annexed to this Act, to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate or to which it belongs, or in the case of any burial ground or cemetery vested in any burial board to the person required by law to keep the register of burials in such burial ground or cemetery, who shall thereupon enter such burial in the register of burial of such parish or district, or of such burial ground or cemetery, and such entry shall form part thereof. Such entry, instead of stating by whom the ceremony of burial was performed, shall state by whom the same has been certified under this Act. Any person who shall wilfully make any false statement in such certificate, and any rector, vicar, or minister, or other such person as aforesaid, receiving such certificate, who shall refuse or neglect duly to enter such burial in such register as aforesaid, shall be guilty of a misdemeanour.

Order of  
coroner or cer-  
tificate of re-  
gistrar to be  
delivered to  
relative, &c.,  
instead of to  
person who  
buries.

11. Every order of a coroner or certificate of a registrar given under the provisions of sect. 17 of the Births and Deaths Registration Act, 1874, shall, in the case of a burial under this Act, be delivered to the relative, friend, or legal representative of the deceased, having the charge of or being responsible for the burial, instead of being delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate shall have been given by the coroner or registrar who

fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings, and any such relative, friend, or legal representative so having charge of or being responsible for the burial of the body of any person buried under this Act as aforesaid, as to which no order or certificate under the same section of the same Act shall have been delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds.

12. No minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the Church, in any unconsecrated burial ground or cemetery or part of a burial ground or cemetery, or in any building thereon, in any case in which he might have lawfully used the same service, if such burial ground or cemetery or part of a burial ground or cemetery had been consecrated. The relative, friend, or legal representative having charge of or being responsible for the burial of any deceased person who had a right of interment in any such unconsecrated ground vested in any burial board, or provided under any Act relating to the burial of the dead, shall be entitled, if he think fit, to have such burial performed therein according to the rites of the Church of England by any minister of the said church who may be willing to perform the same.

Liberty to use burial service of Church of England in unconsecrated ground.

13. From and after the passing of this Act, it shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the ordinary, without being subject to any ecclesiastical or other censure or penalty.

Relief of clergy of Church of England from penalties in certain cases.

14. Save as in this Act expressly provided as to ministers of the Church of England, nothing herein contained shall authorise or enable any such minister who shall not have become a declared member of any other church or denomination, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act which he would not by law have been authorised or enabled to do if this Act had not passed, or to exempt him from any censure or penalty in respect thereof.

Saving as to ministers of Church of England.

15. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

Application of Act.

## SCHEDULES TO WHICH THIS ACT REFERS.

## SCHEDULE (A.)

*Notice of Burial.*

I, \_\_\_\_\_, of \_\_\_\_\_, being the relative [or friend, or legal representative, as the case may be, describing the relation if a relative,] having the charge of or being responsible for the burial of A. B., of \_\_\_\_\_, who died at \_\_\_\_\_, in the parish of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, do hereby give you notice that it is intended by me that the body of the said A. B. shall be buried within the [here describe the churchyard or graveyard in which the body is to be buried,] on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_, without the performance in the manner prescribed by law of the services for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [or as the case may be,] of \_\_\_\_\_.

## SCHEDULE (B.)

I, \_\_\_\_\_, of \_\_\_\_\_, the person having the charge of (or being responsible for) the burial of the deceased, do hereby certify that on the day of \_\_\_\_\_, A. B., of \_\_\_\_\_, aged \_\_\_\_\_, was buried in the churchyard [or graveyard] of the parish [or district] of \_\_\_\_\_.

To the Rector [or as the case may be,] of \_\_\_\_\_.

## COMPANIES.

*The Companies Act, 1862.*

25 & 26 VICT. c. 89.

Prohibition of  
certain partner-  
ships.

4. No company, association, or partnership, consisting of more than ten persons shall be formed after the commencement of this Act for carrying on the business of banking unless registered under this Act, or formed pursuant to some other Act or of letters patent.

No company, association, or partnership, consisting of more than twenty persons shall be formed after the commencement of this Act for the purpose of carrying on any other business that has for its object the acquisition of gain unless registered under this Act, or formed pursuant to some other Act or of letters patent, or unless it is a mining company within the Stannaries.(a)

(a) To render an unregistered company, association, or partnership illegal within sect. 4, there must be a joint relation of more than twenty persons for the common purpose of performing jointly a succession or series of acts such as to constitute a business, other than banking, which has for its object the acquisition of gain by the company. "Business" is to be understood in the practical sense of the word as ordinarily used, and does not include an arrangement the parties to which are not directly or indirectly to be parties to any contract. A mere subsidiary minor transaction provided for under a trust deed, although it may result in gain, does not become a part of the object so as to bring the case within this section: (*Smith v. Anderson*, 43 L. T. 829; 15 Ch. Div. 247; 50 L.J. 39, Ch.)

**PART I.—*Constitution and Incorporation of Companies and Associations under this Act.***

***Memorandum of Association.***

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company with or without limited liability. Mode of forming company.

7. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound-up. Mode of limiting liability.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain : Memorandum of association of company limited by shares.

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name.
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate.
- (3.) The objects for which the proposed company is to be established.
- (4.) A declaration that the liability of the members is limited.
- (5.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount.

Subject to the following regulations :

- (1.) That no subscriber shall take less than one share.
- (2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things : Memorandum of association of company limited by guarantee.

- (1.) [Identical with sect. 8 (1).]
- (2.) [Identical with sect. 8 (2).]
- (3.) [Identical with sect. 8 (3).]
- (4.) A declaration that each member undertakes to contribute



to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum  
of association  
of unlimited  
company.

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things :

(1.) The name of the proposed company.

(2.) [Identical with sect. 8 (2).]

(3.) [Identical with sect. 8 (3).]

Stamp, signa-  
ture, and effect  
of memo-  
randum.

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least ; it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Power to alter  
memorandum.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned (a) as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided, in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Change of name.

13. Power to company to change its name by means of a special resolution, and with the approval of the Board of Trade.

#### *Articles of Association.*

Regulations to  
be prescribed.

14. The memorandum of association may, in the case of a company limited by shares, and shall in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers of the memorandum of association, and prescribing such regulations for

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(a) As to what is a special resolution, see sect. 51, p. 78.



the company as the subscribers to the memorandum of association deem expedient; the articles shall be expressed in separate paragraphs numbered arithmetically; they may adopt all or any of the provisions contained in Table (A.) in the first schedule to the Act; they shall in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in Table (A.) in the first schedule to the Act, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Application of  
Table (A).

16. The articles of association shall be printed; they shall bear the same stamp as if they were contained in a deed; and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member of the company in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

Stamp, signature, and effect  
of articles.

#### *General Provisions.*

17. As to registration of memorandum and articles, and payment of fees thereupon.

Registration.

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act, or by the desire of the

parties, to be registered, the registrar shall certify under his hand that the company is incorporated, and, in the case of a limited company, that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up, as is hereinafter mentioned. A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Copies of memorandum and articles to be supplied to members.

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member at his request, on payment of the sum of 1s. or such less sum as may be prescribed by the company, for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding 1l.

Identity of name.

20. Prohibition against identity of names in companies.

Restriction as to art, &c., companies holding land.

21. No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of the principal or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

## PART II.—*Distribution of Capital and Liability of Members of Companies and Associations under this Act.*

### *Distribution of Capital.*

Nature of interest in company.

22. The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Definition of "member."

23. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to

become members of the company whose memorandum they have subscribed, and, upon the registration of the company, shall be entered as members on the register of members; and every other person who has agreed (a) to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

24. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. Transfer by personal representative.

25. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: Register of members.

(1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed to be considered as paid on the shares of each member.

(2.) The date at which the name of any person was entered in the register as a member.

(3.) The date at which any person ceased to be a member.

And any company acting in contravention of this section shall incur a penalty not exceeding 5*l.* for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorise or permit such contravention shall incur the like penalty.

26. Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each Annual return of members, &c.

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(a) Not necessarily in writing (*Cookney's case*, 3 De G. & J. 170). Usually there must be something, *e.g.*, notice of allotment, to show the applicant for shares that his application has been agreed to: (*Gunn's case*, 3 Ch. 40; *Richards v. Home Assurance Association*, 6 C. P. 591.) But it is sufficient if the letter of allotment be duly addressed and posted to the allottee, although not received by him: (*Household Fire, &c., Company Limited v. Grant*, 4 Ex. Div. 216.)

of them, and shall contain a summary specifying the following particulars :—

- (1.) The amount of the capital of the company, and the number of shares into which it is divided.
- (2.) The number of shares taken from the commencement of the company up to the date of the summary.
- (3.) The amount of calls made on each share.
- (4.) The total amount of calls received.
- (5.) The total amount of calls unpaid.
- (6.) The total amount of shares forfeited.
- (7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, and a copy shall forthwith be forwarded to the registrar of joint-stock companies.

27. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary, as is hereinbefore mentioned, to the registrar, such company shall incur a penalty not exceeding 5*l.* for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Conversion  
into stock.

28. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint-stock companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

29. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members thereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Trusts.

30. No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland.

Certificate.

31. A certificate, under the common seal of the company,

specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

32. As to inspection of the register by members and others, and as to the supply of copies thereof, or of any part thereof, to members and others. Inspection of register.

33. Power to close register at certain times not exceeding thirty days in each year. Close of register.

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding 5*l.* for every day during which such neglect to give notice continues, and every director or manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. Notice of increase of capital and members to be given to registrar.

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England, by motion in [the High Court of Justice], or by application to a judge sitting in chambers, or in such other manner as the said Court may direct, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained; the Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding. Rectification of register.

decide any question that it may be necessary or expedient to decide for the rectification of the register.(a)

36. Whenever any order has been made rectifying the register in the case of a company hereby required to send a list of its members to the registrar, the Court shall, by its order, direct that due notice of such rectification be given to the registrar.

Register to  
be evidence.

37. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

### *Liability of Members.(b)*

Liability of  
present and past  
members.

38. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following :

- (1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up.
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.
- (3.) No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (4.) In the case of a company limited by shares, no contributions shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.
- (5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association.
- (6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other

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(a) It seems to be clearly established that, in order to give jurisdiction, it is not necessary that there should be actual default in the company; that it is a matter of discretion whether the court will exercise the jurisdiction; and that if the legal title in the applicant is clear, the order ought to be made, otherwise not: (1 Chitty's Statutes, 4th ed. 875, citing *Ex parte Shaw*, 2 Q. B. Div. 463.)

(b) And see 30 & 31 Vict. c. 131, s. 35, *post*.

contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract.

- (7.) No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

**PART III.—*Management and Administration of Companies and Associations under this Act.***

***Provisions for Protection of Creditors.***

39. Every company under this Act shall have a registered office, to which all communications and notices may be addressed. Registered office.  
If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding 5*l.* for every day during which business is so carried on.

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

41. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. Publication of name.

42. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding 5*l.* for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such



company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of 50*l.*, and shall further be personally liable (a) to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Register of  
mortgages.

43. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry being made, every director, manager, or other officer (b) of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding 50*l.* The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding 5*l.*, and a further penalty not exceeding 2*l.* for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the Vice-warden of the Stannaries in the case of companies subject to his jurisdiction, may, by order, compel an immediate inspection of the register.

Banking, &c.,  
companies.

44. As to publication of certain statements by banking, insurance, and deposit companies.

List of directors  
to be sent to  
registrar.

45. Every company under this Act, and not having a capital divided into shares, shall keep at its registered office a register

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(a) Where a secretary duly authorised accepted a bill in his own name, adding, "Secretary to the said company," it was held that the acceptance was intended to be the acceptance of the company, and that the secretary was, therefore, personally liable to the holder of the bill, by reason of the omission of the word "limited:" (*Penrose v. Martyn*, 28 L. J. 28, Q. B.)

(b) Not a banker: (*Ex parte National Bank*, 14 Eq. 507.)



containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint-stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

46. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding 5*l.* for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default, shall incur the like penalty. Penalty for not keeping register of directors.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Act, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company. Bills and notes.

48. If any company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action of any other member. Prohibition where less than seven members.

#### *Provisions for Protection of Members.*

49. A general meeting of every company under this Act shall be held once at the least in every year. General meeting.

50. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in Table (A.) in the first schedule, where such table is applicable to the company, or Power to alter regulations.

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(a) See *Lindus v. Melrose*, 27 L. J. 826, Ex.; *Smith v. Johnson*, 27 L. J. 363, Ex.; *Eastwood v. Bain*, 28 L. J. 74, Ex.; *In Re Peruvian Railway Company*, 2 Ch. 617; *Dutton v. Marsh*, 6 Q. B. 361.

(b) See sect. 89 of the 1867 Act, *post*.

make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Definition of  
"special reso-  
lution."

51. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed; at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same; notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company; in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Where no regu-  
lations as to  
meetings.

52. In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member, in manner in which notices are required to be served by Table A. in the first schedule hereto, (a)

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(a) The following are the regulations in Table A. in the first schedule to the Act which relate to notices:—(95.) A notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode. (96.) All notices required to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and

and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

53. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint-stock companies, and be recorded by him; if such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding 2*l.* for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. Registration of special resolutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution; where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of 1*s.* or such less sum as the company may direct; and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding 1*l.* for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise and permit such default shall incur the like penalty. Copies of special resolutions.

55. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company and under his seal, shall be binding on the company and have the same effect as if it were under the common seal of the company. Execution of deeds abroad.

56. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any company under this Act, and to report thereon, in such manner as the board may direct, upon the applications following:— Examination by inspectors.

(1.) In the case of a banking company that has a capital

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notice so given shall be sufficient notice to all the holders of such share. (97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post-office.

divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued.

(2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued.

(3.) In the case of any company not have a capital divided into shares, upon the application of members, being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

57. The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

58. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly; if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding 5*l.* in respect of each offence.

59. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade; such report shall be written or printed, as the Board of Trade directs: a copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid, shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

60. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that instead of making their report to the Board of Trade they shall make the same in such manner and to such persons as the company in general

meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Board of Trade.

61. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

### *Notices.*

62. Any summons, notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office. Service of notices on company.

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post-office. Notices by post.

64. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. Authentication of notices.

### *Legal Proceedings.*

65. Offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices. Recovery of penalties.

66. Power of justices as to application of penalties.

67. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings (a); Evidence of proceedings at meetings.

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(a) A minute containing the terms of an agreement, and so signed, satisfies the Statute of Frauds: (*Jones v. Victoria Graving Dock Company*, 2 Q. B. Div. 314.)

and until the contrary is proved, every general meeting of the company or meeting of directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators, shall be deemed to be valid, and all acts done by such directors, managers, or liquidators, shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments, or qualifications.

68. As to jurisdiction of the vice-warden of the stannaries.

Security for  
costs.

69. Where a limited (a) company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given. (b)

#### *Arbitrations.*

Power to refer.

72. Power for companies under this Act to refer matters in dispute to arbitration, in accordance with the Railway Companies Arbitration Act, 1859.

73. Extension of the Railway Companies Arbitration Act, 1859, to arbitrations in pursuance of this Act.

### *PART IV.—Winding-up of Companies and Associations under this Act.*

#### *Preliminary.*

"Contributory."

74. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound-up. It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Liability of  
contributory.

75. The liability of any person to contribute to the assets of a company under this Act in the event of the same being wound-up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or

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(a) The Court refused to order an unlimited company, though insolvent, to give security: (*United Ports Company v. Hill*, 5 Q. B. 895.)

(b) The amount of security is in the discretion of the Court: (*Imperial Bank of China v. Bank of Hindustan*, 1 Ch. 487.)

respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory; and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly. Contributories  
in case of death.

77. If any contributory becomes bankrupt either before or after he has been placed on the list of contributories, his [trustee] shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound-up.(a) Contributories  
in case of  
bankruptcy.

78. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.(b) Contributories  
in case of  
marriage.

#### *Winding-up by Court.*

79. A company under this Act may be wound-up by the court, as hereinafter defined, under the following circumstances:— When company  
may be wound-  
up by court.

- (1.) Whenever the company has passed a special resolution requiring the company to be wound-up by the court.
- (2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.
- (3.) Whenever the members are reduced in number to less than seven.
- (4.) Whenever the company is unable to pay its debts.(c)

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(a) There cannot be a proof under this section unless the winding-up has preceded the bankruptcy: (*Financial Corporation v. Lawrence*, 4 C. P. 781.)

(b) See, however, the alterations made as to the husband's liability for his wife's ante-nuptial debts by the Married Women's Property Act.

(c) *I.e.*, debts actually due: (*Re European Life Assurance Society*, 9 Eq. 122.)



(5.) Whenever the court is of opinion that it is just and equitable that the company should be wound-up.(a)

When company  
deemed unable  
to pay debts.

80. A company under this Act shall be deemed to be unable to pay its debts :—

(1.) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding 50*l.* then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected (b) to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor.

(2.) Whenever in England and Ireland execution or other process issued on a judgment or order obtained in any court in favour of any creditor in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part. (c)

(4.) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

"The court."

81. The expression "the court" in this part of the Act means in the case of a company registered in England—the [Chancery Division of the High Court of Justice]: Provided

(a) *I.e.*, from the existence of circumstances *ejusdem generis* with those mentioned in the preceding sub-sections of this section: (*Re Suburban Hotel Company*, 2 Ch. 737.) Owing to the provisions for voluntary winding-up in sect. 129, the court will not, however, very readily act under this sub-section: (*Re Langham Skating Rink Company*, 5 Ch. Div. 669.) But where the main object for which a company has been formed has failed, then, although there are general words in the memorandum of association showing other subordinate and ancillary objects, and those have not failed, the court will hold that the substratum of the company is gone, and order it to be wound-up. Where it is evident to the court that the thing which a company has been formed to acquire cannot be acquired, and that the company cannot carry out the objects for which it was formed, the court will make a winding-up order, although when the petition is presented one year has not expired since the incorporation of the company: (*Re German Date Coffee Company Limited*, 46 L. T. N. S. 327; 20 Ch. Div. 169; 51 L. J. 564, Ch.) And where the substratum of the company is gone, so that it is impossible to carry on the business for which the company was formed, it is "just and equitable" that the company shall be wound-up, and a winding-up order will be made on the petition of a shareholder, although the company is not insolvent and a large majority of the shareholders are opposed to any winding-up: (*Re The Haven Gold Mining Company*, 46 L. T. N. S. 322; 20 Ch. Div. 121; 51 L. J. 242, Ch.)

(b) Mere omission to comply with such notice is not neglect within the meaning of this sub-section: (*London and Paris Banking Corporation*, 19 Eq. 444.)

(c) The judgment creditor need not issue execution if the company's solicitors tell him that the company has no assets on which to levy: (*Re Flagstaff Silver Mining Company of Utah*, 20 Eq. 268.)



that where the [Chancery Division] makes an order for winding-up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings for winding-up the same to be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate: and thereupon such last-mentioned court of bankruptcy shall, for the purposes of winding-up the company, be deemed to be "the court" within the meaning of the Act, and shall have, for the purposes of such winding-up, all the powers of the [Chancery Division] as the case may require. (a)

82. Any application to the court for the winding-up of a company under this Act shall be by petition. It may be presented by the company, or by any one or more creditor or creditors, contributory or contributories (b) of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Application for winding-up to be made by petition.

83. Any judge of the [Chancery Division] may do in chambers any act which the court is hereby authorised to do.

Power of judge.

84. A winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Commencement of winding-up.

85. The court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action or proceeding against the company, upon such terms as the court thinks fit (c); the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Stay of action, &c., after petition.

86. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Hearing of petition.

87. When an order has been made for winding-up a company under this Act, no action or other proceeding shall be proceeded

Stay of action, &c., after winding-up order.

(a) And see sect. 41 of 80 & 81 Vict. c. 131, *post*.

(b) See, however, sect. 40 of 80 & 81 Vict. c. 131, *post*.

(c) The application may be made *ex parte* (*Masbach v. Anderson and Co.*, 37 L. T. 440), and must be made to the Division of the High Court in which the action is pending: (*Re South of France Syndicate*, Id. 260; *Re Artistic Colour Printing Company*, 42 L. T. 808; 13 Ch. Div. 502; 49 L. J. 526, Ch.)

with or commenced against the company except with the leave of the court, and subject to such terms as the court may impose.

Copy of order to be registered.

88. When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the Registrar of Joint-Stock Companies.

Power to stay proceedings.

89. The court may at any time after an order has been made for winding-up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share capital of company limited by guarantee.

90. When an order has been made for winding-up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (in England and Ireland of the nature of a specialty) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court.

Court may have regard to wishes of creditors or contributories.

91. The court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court; in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company. (a)

#### *Official Liquidators.*

Appointment of official liquidator.

92. For the purpose of conducting the proceedings in winding-up a company, and assisting the court therein, there may be

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(a) An unpaid creditor of a company, has, *ex debito justitiæ*, a *prima facie* right to a winding-up order; but that *prima facie* right may be rebutted. When a petition for winding-up is presented by an unpaid creditor, and opposed by other unpaid creditors, the court ought to have regard not merely to the number of the opposing creditors and the total amount of indebtedness which they represent, as compared with the number of the supporting creditors and the total amount of indebtedness which they represent, but also to the reasons adduced; and a winding-up order should not be made if the effect will be injurious, by destroying a prospect of future profit from the business, or if no benefit can be obtained for the petitioner by the order being made: (*Re Great Western (Forest of Dean) Coal Consumers Company Limited*, 46 L. T. 875.)

appointed a person or persons to be called an official liquidator or official liquidators; and the court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court.

93. Any official liquidator may resign or be removed by the court on due cause shown: and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the court may direct; and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the court directs.

Resignation,  
removal, com-  
pensation, &c

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the court.

Style and duty  
of official liqui-  
dator.

95. The official liquidator shall have power, with the sanction of the court, to do all such things as may be necessary for winding-up the affairs of the company and distributing its assets. [Many specific matters which may be so done are set out in this section.]

Powers of  
official liqui-  
dator.

96. The court may provide by any order that the official liquidator may exercise any of the powers mentioned in sect. 95 without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

97. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties. (a)

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(a) Such solicitor has no claim against the liquidator personally for his costs (*Re Anglo-Moravian, &c., Railway Company*, 1 Ch. Div. 180); but his costs must be paid in full before the liquidator can receive anything out of the assets: (*Re Massey*, 9 Eq. 867.)

*Ordinary Powers of Court.*

Application of  
assets.

98. The court is to settle a list of contributories, and cause the assets to be collected and applied in discharge of the liabilities.

99. Provision as to representative contributories.

Power to re-  
quire delivery of  
property.

100. The court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Payment of  
debts by con-  
tributory.

101. The court may at any time after making an order for winding-up the company make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory, by way of set-off, any moneys due to him, or the estate which he represents, from the company, but not any moneys due to him as a member of the company in respect of any dividend or profit; provided, that when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls. (a)

Power to make  
calls.

102. The court may, at any time after making an order for winding-up a company, make calls on the contributories to the extent of their liability.

Order to pay  
into bank.

103. The court may order money due to the company to be paid into the Bank of England to the account of the official liquidator.

104. Moneys, bills, notes, and other securities paid and delivered into the Bank of England shall be subject to the order of the court.

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(a) Members who are creditors, and have paid up all calls, are paid *pari passu* with the rest of the creditors (*Grissell's case*, 1 Ch. 528; *Re West of England Bank*; *Ex parte Brown*, 41 L. T. 27; 12 Ch. Div. 823; 48 L. J. 600, 604, Ch.); and this is not affected by sect. 10 of the Judicature Act, 1875: (*Re The General Works Company Limited*; *Gill's case*, 41 L. T. 21; 12 Ch. Div. 755; 48 L. J. 774, Ch.)

105. Provision in case of representative contributory not paying moneys ordered.

106. As to how far the order of the court is evidence of moneys due from contributories.

107. The court may exclude creditors not proving within a certain time.

109. The court shall adjust the rights of the contributories Adjustment. amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

110. The court may make an order as to costs where assets Costs. insufficient to satisfy liabilities.

111. When the affairs of the company have been completely Dissolution. wound-up, the court shall make an order that the company be dissolved from the date of such order.

112. Any order so made shall be reported by the official liquidator to the registrar.

113. Penalty on not so reporting the dissolution, not exceeding 5*l.* for every day of default.

### *Extraordinary Powers of Court.*

115. Power of court to summon before it persons suspected of having property of the company, or capable of giving Court may summon certain persons. information as to the same, and to order the production of books, documents, &c.

117. The court may examine such persons upon oath, either by word of mouth or upon written interrogatories, and may reduce the answers into writing and require them to subscribe the same.

118. Power to cause arrest of contributory and seizure of his Arrest of contributory. goods when he is about to abscond, or remove, or conceal any of his goods.

### *Voluntary Winding-up.*

129. A company under this Act may be wound-up voluntarily :— When company may be wound-up voluntarily.

- (1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily.
- (2.) Whenever the company has passed a special resolution requiring the company to be wound-up voluntarily.
- (3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their

satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind-up the same. (a)

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined. (b)

**Commencement.** 130. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution (c) authorising such winding-up.

**Effect of voluntary winding-up.**

131. Whenever a company is wound-up voluntarily the company shall from the date of the commencement of such winding-up cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound-up.

**Notice of resolution.**

132. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement as respects companies registered in England in the *London Gazette*.

**Consequences of voluntary winding-up.**

133. The following consequences shall ensue upon the voluntary winding-up of a company:—

- (1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company.
- (3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him.
- (4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him.
- (5.) Upon the appointment of liquidators all the powers of the directors shall cease, except in so far as the company

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(a) The notice calling the meeting for this purpose must state its object, or the resolution will be invalid: (*Silkstone Fall Colliery Company*, 1 Ch. Div. 38.)

(b) See sect. 51, p. 78.

(c) This means the confirmatory resolution where such a resolution is necessary: (*Weston's case*, 4 Ch. 20.)

in general meeting, or the liquidators, may sanction the continuance of such powers.

- (6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two.
- (7.) The liquidators may, without the sanction of the court, exercise all powers by this Act given to the official liquidator. (a)
- (8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories.
- (9.) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up; and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly, or wholly, fail to pay their respective portions of the same.
- (10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

134. Where a company, limited by guarantee, and having a capital divided into shares, is being wound-up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Effect on share capital where company limited by guarantee.

135. A company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with

Delegation of authority to appoint liquidators.

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(a) See sect. 95, *ante*, p. 87.



respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors, in pursuance of such delegated power, shall have the same effect as if it had been done by the company.

Arrangement.

136. Any arrangement entered into between a company about to be wound-up voluntarily, or in the course of being wound-up voluntarily, and its creditors, shall be binding on the company, if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Appeal.

137. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary, or confirm the same.

Application to court.

138. Where a company is being wound-up voluntarily the liquidators, or any contributory, may apply to the court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound-up by the court; and the court may make such order as it thinks just.

Liquidators may call general meetings.

139. Where a company is being wound-up voluntarily the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution, or extraordinary resolution, or for any other purposes they think fit; and, in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Vacancy in liquidators.

140. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for that purpose may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the



continuing liquidators, if any, or by any contributory of the company, be determined by the court.

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator or liquidators: the court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up. Power of court to appoint liquidators.

142. As soon as the affairs of the company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England, in the *London Gazette*. Liquidators' account.  
General meeting.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved; if the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding 5*l.* for every day during which such default continues. Liquidators to report meeting.

144. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims. Costs.

145. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound-up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up. Saving of rights of creditors.

146. Where a company is in course of being wound-up voluntarily, and proceedings are taken for the purpose of having the same wound-up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound-up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up. Court may adopt proceedings of voluntary winding-up.

#### *Winding-up subject to the Supervision of the Court.*

147. When a resolution has been passed by a company to wind-up voluntarily, the court may make an order directing that Court may direct winding-up subject to supervision.

the voluntary winding-up shall continue, but subject to such supervision of the court, and with such liberty for creditors, contributories, or others, to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just.

Petition.

148. A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding-up the company by the court.

Wishes of creditors.

149. The court may have regard to the wishes of the creditors or contributories. [The greater part of this section is identical with sect. 91, *ante*, p. 86.]

Additional liquidators.

150. Power to the court to appoint additional liquidators in winding-up subject to supervision.

Effect of order.

151. Where an order is made for a winding-up subject to the supervision of the court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the court, exercise all their powers, without the sanction or intervention of the court, in the same manner as if the company were being wound-up altogether voluntarily; but, save as aforesaid, any order made by the court for a winding-up, subject to the supervision of the court, shall for all purposes be deemed to be an order of the court for winding-up the company by the court.

### *Supplemental Provisions.*

Dispositions after commencement of winding-up.

153. Dispositions, transfers, &c., made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void.

Books to be evidence.

154. Where any company is being wound-up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

155. As to disposal of books, accounts, and documents of wound-up company.

Inspection of books and papers.

156. Where an order has been made for winding-up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just; and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court, but not further or otherwise.

Assignee may sue.

157. Any person to whom any thing in action belonging to the company is assigned under this Act, may bring or defend

any action relating to such thing in action in his own name.

158. In the event of any company being wound-up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value. (a) Debts provable.

159 and 160. Power to the liquidators, with the sanction of the court, where the company is being wound-up by the court, or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound-up altogether voluntarily, to pay any classes of creditors in full (b), or make compromises with creditors or claimants, and to compromise calls and debts and questions relating to the assets of the company and the winding-up of the company. Compromise.

161 and 162. As to transfer to another company of the whole or a portion of the business or property of a company in course of being wound-up voluntarily, and as to taking shares of such other company in payment therefor. Transfer to another company.

163. Where any company is being wound-up by the court, or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents. (c) Executions.

164. Extension of the bankruptcy doctrine of fraudulent preference to companies being wound-up under this Act.

165. Power of court to assess damages against delinquent directors and officers.

166. If any director, officer, or contributory of any company wound-up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour. Falsification of books.

167. Where any order is made for winding-up a company by Delinquent directors.

(a) See 38 & 39 Vict. c. 77, s. 10, *post*, Part II.

(b) See the Companies Act, 1883, *post*.

(c) Unless such execution, &c., shall be enforced by leave of the court: (*Re Exhall Mining Company*, 10 Jur. N. S. 576; *Re Oak Pits Colliery Company Limited*, 47 L. T. 7.)

the court, or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators, as the case may be, to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

168. Where a company is being wound-up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender; and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Perjury.

169. If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

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### *The Companies Act, 1867.*

30 & 31 VICT. c. 131.

4—8. As to directors with unlimited liability. (a)

#### *Reduction of Capital and Shares.*

Power to reduce capital.

9. Any company limited by shares may, by special resolution (b), so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the Registrar of Joint Stock Companies.

Addition to name.

10. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until

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(a) In his work upon the Companies Acts, Mr. Thring says: "It is difficult to imagine any circumstances under which a company can be advised to impose unlimited liability on its directors." It has not, therefore, been thought necessary to set out these sections.

(b) See 25 & 26 Vict. c. 89, s. 51, *ante*, p. 78.

such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall until such date be deemed to be part of the name of the company within the meaning of the principal Act. (a)

11. A company which has passed a special resolution for reducing its capital may apply to the court by petition for an order confirming the resolution, and on the hearing of the petition, the court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the resolution has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction, on such terms and subject to such conditions as it deems fit. Order of confirmation.

13. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object (b) to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts and claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction. Creditors may object to reduction.

14. The court may dispense with the consent of a creditor on security for his debt being given by the company as in this section mentioned. Court may dispense with consent.

15. The Registrar of Joint Stock Companies, upon the production to him of an order of the court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court) showing, with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the court may direct. The registrar shall Order and minute to be registered.

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(a) *I.e.*, the 25 & 26 Vict. c. 89.

(b) If a creditor does not oppose, he is deemed to consent: (*Re Crédit Foncier of England*, 11 Eq. 356.)

certify under his hand the registration of the order and minutes, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as stated in the minute.

Minute to form  
part of memo-  
randum of  
association.

16. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Creditors  
ignorant.

17. Saving of rights of creditors ignorant of the proceedings taken with a view to such reduction.

Copy of regis-  
tered minutes.

18. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding 1*l.* for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Concealment of  
name of creditor.

19. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in, or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

#### *Subdivision of Shares.*

Shares may be  
subdivided.

21. Any company limited by shares may, by special resolution, (a) so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: Provided that in the subdivision of its existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was

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(a) See 25 & 26 Vict. c. 89, s. 51, *ante*, p. 78.

in the case of the existing share or shares, from which the share of reduced amount is derived.

22. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution. Penalty for default the same as in sect. 18.

Special resolution to be embodied in memorandum.

### *Associations not for Profit.*

23. Where an association about to be formed as a limited company proves to the Board of Trade that it is formed for the purpose of commerce, art, science, religion, charity, or any other useful object, and that it is intended to apply the profits in promoting its objects, and to prohibit payment of a dividend to the members, the Board of Trade may by licence direct the same to be registered with limited liability without the addition of the word "limited" to its name.

Special provisions as to associations not for profit.

### *Calls upon Shares.*

24. Nothing contained in the principal Act shall be deemed to prevent any company under that Act, if authorised by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things:—

Some shares may be fully paid and others not.

- (1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls.
- (2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made.
- (3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

25. Every share in any company shall be deemed and taken to have been issued, and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, or filed with the registrar at or before the issue of such shares.

Issue and holding of shares.

### *Transfer of Shares.*

26. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in

Transfer may be registered in transferee's name.



- the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

*Share Warrants to Bearer.*

27. A warrant of limited shares fully paid up may be issued to bearer.

28. The shares or stock therein specified may be transferred by the delivery of the share warrant.

29. As to registration of name of bearer of share warrant in register of members.

30. The regulations of the company may make the bearer of a share warrant a member.

31. As to entries to be made in register where share warrant issued.

32. As to particulars in respect of share warrants to be contained in the annual summary under 25 & 26 Vict. c. 89, s. 26 (*ante*, p. 71).

33. As to stamp duty on share warrants.

34—36. See these sections in Part IV. *post*.

*Contracts.*

Contracts, how made.

37. Contracts on behalf of any company under the principal Act may be made as follows :

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged.

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged.

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

Prospectus, &c., to specify contracts.

38. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint-stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or



trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract. (a)

*First General Meeting.*

39. Every company formed under the principal Act after the commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding 5*l.* a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty. First general meeting.

*Winding-up.*

40. No contributory of a company under the principal Act shall be capable of presenting a petition for winding-up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder: Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory. Contributory when not qualified to present petition.

41. The [Chancery Division] may refer proceedings for winding-up to a County Court—

42. Or from one County Court to another.

43. As to appeal from the County Court.

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(a) The remedy is by action against the promoters, &c.; a contract entered into to take shares cannot be rescinded: (*Twycross v. Grant*, 2 C. P. Div. 469.)

*The Joint Stock Companies Arrangement Act, 1870.*

33 &amp; 34 Vict. c. 104.

2. Where any compromise or arrangement shall be proposed between a company in course of being wound-up and its creditors, the [Chancery Division], on the application of a creditor or the liquidator, may order a meeting of the creditors, and if a majority in number representing three-fourths in value of the creditors present, in person or by proxy, shall agree to any arrangement or compromise, the same shall, if sanctioned by an order of the court, be binding.

*The Companies Act, 1877.*

40 &amp; 41 Vict. c. 26.

"Capital."

3. The word "capital," as used in the Companies Act, 1867, shall include paid-up capital; and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company: and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867.

Application of  
provisions of  
30 & 31 Vict.  
c. 131.

4. The provisions of the Companies Act, 1867, as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act. *Proviso*: Where the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital:

- (1.) The creditors of the company shall not, unless the court otherwise direct, be entitled to object or required to consent to the reduction; and
- (2.) It shall not be necessary, before the presentation of the petition for confirming the reduction, to add, and the court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in the Companies Act, 1867.

The court may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital, or such other information in regard to such reduction as the court may think expedient with a view to give proper information to the public in relation to the reduction of its

capital by a company, and, if the court thinks fit, the causes which led to such reduction. The minute required to be registered in the case of reduction of capital shall show the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which at the date of the passing of such resolution have not been taken or agreed to be taken by any person ; and the provisions of the Companies Act, 1867, shall not apply to any reduction of capital made in pursuance of this section.

Power to reduce capital by cancelling unissued shares.

6. Any certificate of the incorporation of any company given by the registrar, or by any assistant registrar for the time being, shall be received in evidence as if it were the original certificate ; and any copy of or extract from any of the documents, or part of the documents, kept and registered at any of the offices for the registration of joint-stock companies in England, Scotland, or Ireland, if duly certified to be a true copy under the hand of the registrar, or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

Certified copies to be evidence.

### *The Companies Act, 1879.*

42 & 43 VICT. c. 76.

2. This Act shall not apply to the Bank of England.

3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, and those Acts, together with this Act, may be referred to as the Companies Acts, 1862 to 1879.

4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act.

Registration anew of company.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies

Act, 1862, in the case of a company registering in pursuance of that Part.

Reserve capital  
of company, how  
provided.

5. An unlimited company may, by the resolutions passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound-up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound-up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purposes of the company being wound-up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound-up.

Liability of bank  
of issue.

6. Sect. 182 of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows: A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound-up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditors as well as the note-holders.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Audit of  
accounts of

7.—(1.) Once at least in every year the accounts of every

banking company registered after the passing of this Act as a banking company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditors may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance-sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance-sheet referred to in the report is a full and fair balance-sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

8. Every balance-sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Signature of  
balance-sheet.

9. On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished, on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same

Registration  
under Act.

manner and have the same effect as if it were the first registration of that company under the Companies Act, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

Privileges of Act available notwithstanding constitution of company.

10. A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

### *The Companies Act, 1880.*

43 VICT. c. 19.

Construction.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879, and the said Acts and this Act may be referred to as "The Companies Acts 1862 to 1880."

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

3. When any company has accumulated a sum of undivided profits, which, with the consent of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

Resolution to be registered.

4. No such special resolution as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

Power to any shareholder within one month after passing of resolution to require company to retain moneys paid upon shares held by such persons.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends

thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the company shall determine, and upon the moneys so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

6. From and after such reduction of capital, the company shall specify in the annual list of members, to be made by them in pursuance of the 26th section of the Companies Act, 1862, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, in pursuance of the fifth section of this Act; and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

Company to specify amounts retained under sect. 5, and profits returned to shareholders.

7.—(1.) Where the Registrar of Joint-Stock Companies has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business, or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Power of registrar to strike names of defunct companies off register.

(2.) If the registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the registrar, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3.) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the registrar may publish in the *Gazette* and send to the company a notice that at the expi-



ration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4.) At the expiration of the time mentioned in the notice, the registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Gazette*, and, on the publication in the *Gazette* of such last-mentioned notice, the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue, and may be enforced as if the company had not been dissolved.

(5.) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Superior Court in which the company is liable to be wound-up; and such court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off: and the court may by the order give such directions and make such provisions as seems just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6.) A letter or notice authorised or required for the purposes of this section to be sent to a company, may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or, if there be no director or officer of the company whose name and address are known to the registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

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### *The Companies Act, 1883.*

46 & 47 VICT. c. 28.

Wages and  
salary to be pre-  
ferential claims.

In the distribution of the assets of any company being wound-up under the Companies Acts, 1862 and 1867, there shall be paid in priority to other debts,—

(a.) All wages or salary of any clerk or servant in respect of service rendered to the company during four months



before the commencement of the winding-up not exceeding fifty pounds ; and

(b.) All wages of any labourer or workman in respect of services rendered to the company during two months before the commencement of the winding-up.

(5.) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves. Such claims to rank equally.

(6.) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the liquidator or liquidators or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when such assets come into the hands of such liquidator or liquidators or official liquidator. Liquidator to discharge same upon receipt of sufficient assets.

## COPYRIGHT.

### *An Act to amend the Law of Copyright.*

5 & 6 VICT. c. 45.

3. The copyright in every book which shall, after the passing of this Act, be published *in the lifetime* of its author, shall endure for the natural life of such author and for seven years from his death, and shall be the property of such author and his assigns. *Proviso:* If the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall endure for such period of forty-two years.

The copyright in every book which shall be published *after the death* of its author, shall endure for forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's MS., and his assigns. (a)

### *Copyright (Musical Compositions) Act, 1882.*

45 & 46 VICT. c. 40.

1. On and after the passing of this Act (b) the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of Printed notice restraining public performance.

(a) "Book" shall mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published (sect. 2).

(b) 10th August, 1882.

public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

Provision when  
right of perform-  
ance and copy-  
right are vested  
in different  
owners.

2. In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Penalty on  
owner of copy-  
right for non-  
compliance with  
notice from  
owner of right  
of performance.

3. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds, to be recovered in any court of competent jurisdiction.

Costs.

4. The costs of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried.

## DEATH BY NEGLIGENCE.

*An Act for compensating the Families of Persons killed by Accidents.*

9 & 10 VICT. c. 93.

(*Lord Campbell's Act.*)

1. When the death of a person shall be caused by such wrongful act, neglect, or default, as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. Action maintainable where person killed by negligence.

2. Every such action shall be for the benefit of the wife, husband, parent, and child, of the deceased person, and shall be brought by and in the name of the executor or administrator of the deceased person; and the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whose benefit such action shall be brought, and the amount recovered after deducting the costs not recovered from the defendant shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct. (a) For whose benefit.

3. Only one action shall lie in respect of the same complaint, and shall be commenced within twelve calendar months after the death of such deceased person. (b) When to be brought.

4. The plaintiff shall deliver with the [statement of claim] a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim. Particulars to be delivered.

5. "Person" shall apply to bodies politic and corporate. "Parent" shall include father, mother, grandfather, grandmother, stepfather, and stepmother. "Child" shall include Interpretation of terms.

(a) A reasonable expectation of pecuniary advantage by the relative remaining alive may be taken into account by the jury, and damages may be given in respect of that expectation (*Pym v. Great Northern Railway Company*, 31 L. J. 249, Q. B.); but damages cannot be given in respect of funeral expenses or mourning (*Dalton v. South-Eastern Railway Company*, 27 L. J. 227, C. P.); nor for mental suffering (*Blaks v. Midland Railway Company*, 21 L. J. 233, Q. B.).

(b) Where the deceased in his lifetime accepted compensation in full satisfaction no such claim can be maintained: (*Read v. Great Eastern Railway*, 18 L. T. N. S. 882.)

son, daughter, grandson, granddaughter, stepson, and step-daughter. (a)

*An Act to amend the 9 & 10 Vict. c. 93.*

27 & 28 VICT. c. 95.

Where executor  
fails to bring  
action.

1. If in any of the cases intended and provided for by the 9 & 10 Vict. c. 93, there shall be no executor or administrator of the person deceased, or if there be, and no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person have been brought by and in the name of his or her executor or administrator, then such action may be brought by and in the name, or names, of all or any of the persons (if more than one) for whose benefit such action would have been if it had been brought by and in the name of such executor or administrator. Every such action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be as if brought by and in the name of such executor or administrator.

Payment into  
court.

2. It shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act, for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

DEBTS OF DECEASED PERSONS.

*An Act to render Freehold and Copyhold Estates, Assets for the Payment of Simple and Contract Debts.*

3 & 4 WILL. 4, c. 104.

1. When any person shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold or copyhold, which he shall not by his last will have charged with, or devised subject to, the payment of his debts, the same shall be assets, to be administered in courts of equity, for the

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(a) A child *en ventre sa mere* is entitled to recover on the death of its father by negligence (*The George and Richard*, 24 L. T. N. S. 717); but not an illegitimate child (*Re Wilson*, 35 L. J. 243, Ch.).

payment of the just debts of such person, as well debts due on simple contract as on specialty. (a)

*An Act to explain and extend the Provisions of the 11 Geo. 4 & 1 Will. 4, c. 47.*

2 & 3 VICT. c. 60.

1. Power to courts of equity to direct mortgages as well as sales of the estates of infant heirs or devisees, and of lands, tenements, or hereditaments devised in settlement, for the purpose of paying the debts of the ancestor, testator, or settler, and to authorise such sales and mortgages to be made where the tenant for life, or other person having a limited interest, or the first executory devisee, is an infant. Mortgages of estates of infant heirs, &c.

2. The surplus of the money arising from such sales or mortgages, shall descend in the same manner as the estates so sold or mortgaged would have descended. Surplus.

### *Debts of Deceased Persons Act.*

32 & 33 VICT. c. 46.

1. In cases of administration all the creditors of a deceased person, as well specialty as simple contract, shall be treated as standing in equal degree, without prejudice to any security held by any creditor for payment of his debt.

## DISTRIBUTION, STATUTES OF.

*An Act for the better Settling of Intestate Estates.*

22 & 23 CAR. 2, c. 10.

5. All ordinaries, and every other person who by this Act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate as follows : Distribution of surplusage.

One third part to the wife, and the residue, by equal portions, to and amongst the children of the intestate, and such persons as legally represent such children in case any of them be then dead, other than such child or children (not being heir-at-law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portion or portions equal to the share which shall by such distribution be allotted to the other children.

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(a) The Act gave preference, however, to specialty debts in which the heirs were bound.

And in case any child, other than the heir-at-law, shall have any estate, or be advanced as aforesaid, not equal to the share which will be so due to the other children, then so much of the surplusage to be distributed to such child or children so advanced, &c., as shall make the estate of all the said children to be equal as near as can be estimated; but the heir-at-law, notwithstanding any land he shall have by descent or otherwise, is to have an equal part in the distribution with the rest of the children.

Where no issue. 6. In case there be no children nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue to be distributed equally to every of the next of kindred of the intestate who are in equal degree, and those who legally represent them. (a)

Where no wife. 7. Provided, that there be no representations admitted among collaterals, after brothers' and sisters' children; and in case there be no wife, all the said estate to be distributed equally to and amongst the children; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate and their legal representatives as aforesaid.

8. No distribution to be made till after one year from the death of the intestate. If any debts appear afterwards the distributees must refund rateably.

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*An Act for Reviving and Continuing several Acts of Parliament.*

1 Jac. 2, c. 17.

7. If after the death of a father any of his children shall die intestate, without wife or (b) children, in the lifetime of the

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(a) In case an intestate dies without issue, leaving a widow and a father, the personal estate is divided between them: (*Keylway v. Keylway*, Gilb. Eq. C. 189.)

The cases of wife and children or representatives of children being provided for as above, the order of distribution is as follows:—

1st. The father.

2nd. The mother, brothers, and sisters and children of deceased brothers and sisters taking by representation.

3rd. Grandfather and grandmother.

4th. Great grandfather, uncle, nephew.

5th. Great grandfather's father, great uncle, great nephew, cousin german.

6th. Great great uncle, great uncle's son, son of cousin german: (2 Chitty's Statutes, 4th ed. 858.) The half blood take equally with the whole blood in the same degree: (*Watts v. Crooke*, Show. P. C. 108.) A child *en ventre sa mere* is considered to be *in esse*: (*Wallis v. Hodson*, 2 Atk. 117.)

(b) "Or" is to be construed "and:" (*Keylway v. Keylway*, 2 P. Wms. 344; *Stanley v. Stanley*, 1 Atk. 457.)

mother, every brother and sister and the representatives of them shall have an equal share with her.

*An Act for making better Provision for the disposal of the undisposed-of Residues of the Effects of Testators.*

1 WILL. 4, c. 40.

1. When any person shall die after the 1st of September, 1830, having by will or codicil thereto appointed an executor or executors, such executor or executors shall be deemed by courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions, in respect of any residue not expressly disposed of, unless it shall appear by the will or codicil that such executor or executors was or were intended to take such residue beneficially. Executors to hold undisposed-of residue in trust for next-of-kin.

2. Nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled in cases where there is no person who would be entitled under the Statute of Distributions. Where no next-of-kin.

DOWER.

*An Act for the Amendment of the Law Relating to Dower.(a)*

3 & 4 WILL. c. 105.

1. "Land," means all hereditaments, corporeal and incorporeal "Land." (except such as are not liable to dower), and any share thereof.

2. When a husband shall die beneficially entitled to land for an interest which shall not entitle his widow out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal thereto (other than an estate in joint tenancy), then his widow shall be entitled in equity to dower out of the same. Equitable estates.

3. When a husband shall have been entitled to a right of entry or action in any land, and his widow will be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof. Seisin unnecessary. *Proviso:* Such dower

(a) The Act does not extend to free-bench: (*Smith v. Adams*, 5 De G. M. & G. 712.)

shall be sued for or obtained within the period during which such right of entry or action might be enforced.

Absolute disposition.

4. No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will. (a)

Certain debts, &c., prevail against.

5. All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower. (b)

How barred.

6. A widow shall not be entitled to dower out of any land of her husband when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

Declaration in will.

7. A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his land.

Directions by will.

8. The right of a widow to dower shall be subject to any conditions, restrictions, or directions which shall be declared by the will of her husband, duly executed.

Devise to widow bars dower.

9. Where a husband shall devise any lands out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein to or for the benefit of his widow, she shall not be entitled to dower out of any land of her husband unless a contrary intention shall be declared by his will.

10. A gift or bequest by a husband to his widow of personal estate or of land not liable to dower shall not bar dower unless a contrary intention shall be declared by his will.

11. An agreement by a husband not to bar dower may be enforced in equity.

12. Legacies bequeathed to widows in satisfaction of dower are to continue to have priority over other legacies.

13. No widow shall hereafter be entitled to dower *ad ostium ecclesiæ*, or dower *ex assensu patris*.

14. The Act takes effect from the 1st of January, 1834.

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(a) A general devise is within this section: (*Lacey v. Hill*, 19 Eq. 346.)

(b) But the widow's right to dower prevails as against mere creditors: (*Spyer v. Hyatt*, 20 Beav. 621.)



## FACTORS.

*Factors Acts Amendment Act.(a)*

40 &amp; 41 Vict. 39.

1. The expression "the principal Acts" means 4 Geo. 4, c. 83 ; 6 Geo. 4, c. 94 ; and 5 & 6 Vict. c. 39.

2. Where any agent or person has been entrusted with and continues in the possession of any goods or documents of title to goods within the meaning of the principal Acts as amended by this Act, any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods, or makes advances upon the faith or security of such goods or documents.

Revocation of agency not to prejudice third party.

3. Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other dispositions of the goods or documents made by such vendor or any person or agent entrusted by him with the goods or documents within the meaning of the principal Acts as amended by this Act, shall be as valid as if such vendor or person was an agent or person entrusted by the vendee with the goods or documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice that the goods have been previously sold.

Retention of documents of title by vendor.

4. Where any goods have been sold or contracted to be sold, and the vendee, or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession, or by any other person or agent entrusted by the vendee with the documents within the meaning of the principal Acts as amended by this Act, shall be

Obtaining of documents of title by vendee.

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(a) It has been thought sufficient, in reference to the previous Factors Acts (see sect. 1), to give the student the following summary of their effect:—First, where goods or documents for the delivery of goods are pledged as a security for present or future advances, with the knowledge that they are not the property of the factor, but without notice that he is acting without authority, in such case the pledgee acquires an absolute lien. Secondly, where goods are pledged by a factor *without notice* to the pledgee that they are the property of another, as a security for a *pre-existing* debt, in that case the pledgee acquires the same right as the factor had. Thirdly, where a contract to pledge is made in consideration of the delivery of other goods or documents of title, upon which the person delivering them up had a lien for a previous advance (which is deemed to be a contract for a present advance), in that case the pledgee acquires an absolute lien, to the extent of the value of the goods given up: (2 Chitty's Statutes, 4th ed., 1082.)

as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of the principal Acts as amended by this Act; provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods.

Transfers of documents of title.

5. Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery, where the document is by custom, or by its express terms transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bond fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the rights of stoppage *in transitu*.

6. This Act is not retrospective.

## FRAUDS, &c.

### *An Act for Prevention of Frauds and Perjuries.*

29 CAR. 2, c. 3.

Effect of estates created by parol.

1. All leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, made or created by livery and seisin only, or by parol and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only.

Exception.

2. Except leases not exceeding three years from the making thereof, (a) whereupon the rent reserved shall amount to two-thirds at least of the full improved value of the thing demised. (b)

Certain interests not to be granted, &c., by parol.

3. No leases, estates, or interests, either of freehold or terms of years, or any uncertain interest (not being copyhold) of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments shall be assigned, granted, or surrendered unless by deed

(a) A lease for less than three years, with an option to the lessee at the end of the term, to prolong it for more than three years, is within this exception: (*Hand v. Hall*, 2 Ex. Div. 355.)

(b) A lease required by this Act to be in writing may be collected from correspondence: (*Jones v. Reynolds*, 1 Q. B. 506. But see 8 & 9 Vict. c. 106, s. 3, *post*, title "Real Property (Miscellaneous Acts).")

or note in writing (a) signed by the party so assigning, &c., or their agents lawfully authorised by writing, or by act or operation of law.

4. No action shall be brought whereby to charge (1) any executor or administrator upon any special promise to answer damages out of his own estate; or (2) whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person (b); or (3) to charge any person upon any agreement made upon consideration of marriage (c); or (4) upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them (d); or (5) upon any agreement that is not to be performed within the space of one year from the making thereof, (e) unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing (f), and signed (g) by the party to be charged therewith, or some other person thereunto by him lawfully authorised (h).

Certain agreements to be in writing.

7. All declarations or creations of trusts of any lands, tenements, or hereditaments (i) shall be manifested and proved by some writing signed by the party who is by law entitled to declare such trust; otherwise they shall be utterly void, except—

Declarations of trust.

8. Trusts (j) arising or resulting by the implication or construction of law, or transferred or extinguished by an act or operation of law.

9. All grants and assignments of any trust shall be in writing,

Assignments of trusts.

(a) A surrender (not being of a copyhold interest) or an interest which might by law have been created without writing) must now be by deed: (8 & 9 Vict. c. 106, s. 3.)

(b) Who must himself remain liable: (*Birkmyr v. Darnell*, 1 Sm. L. C.) The promise must be made to the creditor: (*Eastwood v. Kenyon*, 11 A. & E. 438.) As to consideration for a guarantee, see 19 & 20 Vict. c. 97, s. 3, *post*.)

(c) A promise to marry is not within this section.

(d) Railway shares are not an interest in land: (*Bradley v. Holdsworth*, 3 M. & W. 422.) An agreement giving a right to shoot and carry away game is an interest in land: (*Webber v. Lee*, 47 L. T. 215.) Leases within sect. 2 are not affected by sect. 4: (*Lord Bolton v. Tomlin*, 5 Ald. & E. 856.)

(e) This clause is confined to cases where the agreement is not to be performed, and cannot be carried into execution within the time; and not to agreements that may or may not be performed within a year: (*Ridley v. Ridley*, 1 Bar Rep. 481.)

(f) An agreement in writing may be made by means of a telegram: (*Godwin v. Francis*, 10 Bar Rep. 361.)

(g) By mark, print, initials, or pencil: (2 Chitty's Statutes, 4th ed. 1225.)

(h) The authority of the agent need not be in writing for the purpose of sects. 4 and 17: (*Coles v. Trecothick*, 9 Ves. 250.)

(i) Including chattels real: (*Foster v. Hale*, 3 Ves. 696.)

(j) "Trusts" include "uses:" (*Bushell v. Burland*, Holt, 733.)

signed by the party granting or assigning the same, or shall be utterly void.

Contracts for  
sale of goods.

17. No contract for the sale of any goods, wares, or merchandise for the price (a) of 10*l.* or upward shall be good except the buyer shall (1) accept part of the goods so sold and actually receive the same, or (2) give something in earnest to bind the bargain or in part payment, or (3) that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised.(b)

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*An Act for rendering a written memorandum necessary to the validity of certain Promises and Engagements.*

9 GEO. 4, c. 14.(c)

(*Lord Tenterden's Act.*)

Representations  
as to character.

6. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person to the intent or purpose that such other person may obtain credit [there]upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith. (d)

Extension of  
sect. 17 of 29  
Car. 2, c. 3.

7. The 17th section of the Statute of Frauds (29 Car. 2, c. 3) shall extend to all contracts for the sale of goods of the value of 10*l.* and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

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(a) "Price" is to be read "value," by virtue of 9 Geo. 4, c. 14, s. 7, *infra*: (*Scott v. Eastern Counties Railway Company*, 12 M. & W. 33.)

(b) If several articles are bought at a shop at the same time, and each one is under 10*l.*, but the total sum is above, this section applies (*Baldy v. Parker*, 2 B. & C. 87); but not to the like circumstances in case of a sale by auction, there being in the latter case a separate contract for each lot: (*Roots v. Lord Dormer*, 4 B. & Ad. 77.) Mr. Justice Blackstone says "that if any part of the price is put down, if it is but a penny, or any portion of the goods is delivered by way of earnest, it is binding." It should be observed that the statute says *something* is to be given in earnest, and therefore money, or a bill of exchange, or a ring or glove, or, as was the custom of the Jews, a shoe given in earnest of a bargain, and so expressed at the time, would be equally binding: (2 Chitty's Statutes, 4th ed. 1255.) It will be observed that sect. 4 says "no action shall be brought," but sect. 17 enacts that "no contract, &c., shall be good."

(c) For other sections of this Act, see title "Limitation of Actions."

(d) Not his agent: (*Swift v. Jeweshury*, 9 Q. B. 301.)

8. No memorandum or other writing made necessary by this Stamp duty Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

## FRAUDULENT CONVEYANCES.

*An Act against Fraudulent Deeds, Gifts, Alienations, &c.*

13 ELIZ. c. 5. (a)

1. Every gift, grant, alienation, and conveyance of lands, tenements, hereditaments, goods and chattels, or any of them, or of any lease, rent, profit, or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution, made with intent to delay or defraud *creditors*, shall, as against such creditors and those claiming under them, be utterly void and of none effect. (b)

5. This Act shall not extend to affect assurances made *bonâ fide* and for good (c) consideration to a person without notice of the fraud.

*An Act against Covinous and Fraudulent Conveyances.*

27 ELIZ. c. 4.

2. Every conveyance, grant, lease, and incumbrance of lands, tenements, or hereditaments, made with intent to deceive *purchasers* (d), shall, as against such purchasers and those claiming under them, be utterly void and of none effect.

4. This Act shall not extend to make void conveyances, assignments, or assurances made for good (c) consideration and *bona fide*. (e)

5. If any person make any conveyance, gift, grant, demise, or assurance (f) of lands, tenements, or hereditaments, with any

(a) See on this Act, *Twyne's case* and notes thereto, in the "Student's Leading Cases," p. 88.

(b) A *bonâ fide* assignment of the whole of a debtor's property, present and future, by way of mortgage to secure an existing debt and future advances to a certain amount, is not void as against the creditors of the grantor under this Act, as necessarily tending to defeat or delay them: (*Ex parte Games; Re Bamford*, 40 L. T. 789.)

(c) "Good" in this Act means "valuable."

(d) Including mortgagees (*Dolphin v. Aylward*, 4 H. L. 486) and lessees at rack-rent: (*Goodright and Humphreys v. Moses*, 2 Bla. 1019.)

(e) An assignment of leasehold property can never be voluntary, the liability to pay the rent and perform the covenants of the lease being a valuable consideration: (*Price v. Jenkins*, 37 L. T. 51.)

(f) Not being a mortgage made *bonâ fide* and for good [valuable] consideration: (sect. 6.)

condition of revocation, determination, or alteration at will, and afterwards sell, demise, grant, convey, or charge the same for money or other good consideration, such former conveyance, &c., if not revoked, shall, as against the purchaser, &c., and those claiming under him, be void.

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## GAMING CONTRACTS.

*An Act to Amend the Law concerning Games and Wagers.*

8 & 9 VICT. c. 109.

18. All contracts or agreements, whether by parol or in writing, by way of gaming, or wagering, shall be null and void; and no suit shall be brought or maintained for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person, to abide the event upon which any wager shall have been made. (a)

But the Act does not apply to any subscription or contribution, or agreement to subscribe or contribute, for or towards any plate, prize, or sum of money, to be awarded to the winner of any lawful game.

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## GROUND GAME.

*Ground Game Act, 1880.*

43 & 44 VICT. c. 47.

Occupier to have a right inseparable from his occupation to kill ground game concurrently with any other person entitled to kill the same on land in his occupation.

1. Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to take and kill ground game on the same land: Provided that the right conferred on the occupier by this section shall be subject to the following limitations:—

(1.) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing:—

(a.) The occupier himself and one other person authorised in writing by such occupier shall be the

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(a) Where two persons deposit money with a stakeholder to abide the event of a walking match between them, that is a wager within this section; and if either party repudiates the agreement before the stakes are paid over, though after the decision of the match, he is entitled to recover his stake from the stakeholder: (*Diggles v. Higgs*, 37 L. T. 27.)

only persons entitled under this Act to kill ground game with firearms ;

(b.) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bond fide* employed by him for reward in the taking and destruction of ground game ;

(c.) Every person so authorised by the occupier, on demand by any person having a concurrent right to kill and take the ground game on the land, or any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and, in default, he shall be deemed to be not an authorised person.

(2.) A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands ; or by reason of an occupation for the purposes of grazing or pasturage of sheep, cattle, or horses for not more than nine months.

(3.) In the case of moorlands and uninclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise the rights conferred by this section only from the 11th day of December in one year until the 31st day of March in the next year, both inclusive ; but this provision shall not apply to detached portions of moorlands or uninclosed lands adjoining arable lands, where such detached portions of moorlands or uninclosed lands are less than twenty-five acres in extent.

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section 1 of this Act. Save as aforesaid, but subject as in section 6 hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed.

Occupier entitled to kill ground game on land in his occupation not to divest himself wholly of such right.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such

Agreements in contravention of right are void.

right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void.

Exemption from  
game licences.

4. The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him or the persons authorised by him as if he had a licence to kill game; Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870.

Saving clause.

5. Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy, or other contract *bond fide* made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land.

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act.

Nothing in this Act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter, or Act of Parliament.

Prohibition of  
night shooting,  
spring traps  
above ground, or  
poison.

6. No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds.

As to non-occu-  
pier having right  
of killing game.

7. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any Act authorising the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this Act.



8. For the purposes of this Act—

The words "ground game" mean hares and rabbits.

Interpretation  
clause.

10. Nothing in this Act shall authorise the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act.

Saving of exist-  
ing prohibitions.

## INFANTS.(a)

### *Abolition of Tenures Act.*

12 CAR. 2, c. 24.

8. Where any person shall have any child or children under twenty-one years and not married at his death, the father of such child, whether born at the time of the decease of the father, or at that time in *ventre sa mère*, or whether such father be within the age of twenty-one years or of full age, may, by deed (b) or will, in such manner, and from time to time as he shall respectively think fit, dispose of the custody and tuition of such child or children during such time as he or they shall respectively remain under the age of twenty-one years, or any lesser time.

Father may ap-  
point guardians.

9. The person or persons to whom the custody of such child or children shall be disposed or devised may take into his or their custody, to the use of such child or children, the profits of all lands, tenements, and hereditaments of such child or children, and also the custody, tuition, and management of the personal estate of such child or children till their respective age of twenty-one years, or any lesser time, according to such disposition aforesaid. (c)

Powers of  
guardians.

*An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths.*

6 ANNE, c. 18.

1. Any person or persons who shall have any claim or demand

Production of  
*cestui que vie*.

(a) And see sect. 59 of 45 & 46 Vict. c. 38, post, title "Settled Estates."

(b) This means a testamentary instrument in the form of a deed: (*Ex parte Earl of Ilchester*, 7 Ves. 367)

(c) If a female ward marry before twenty one, the guardianship will cease, but not in a case of a male ward marrying before that age: (*Mendes v. Mendes*, 3 Atk. 625; 1 Ves. 90.) Neither a mother (*Ex parte Edwards*, 3 Atk. 519), a grandfather (*Blake v. Leigh*, Ambl. 306), nor a stranger (*Powell v. Cleaver*, 2 Bro. C. C. 500) can appoint a guardian. The father of an illegitimate child is regarded as a stranger, but where he nominates persons in his will as guardians, the court will generally appoint them: (*Ward v. St. Paul*, 2 Bro. C. C. 583.)

in remainder, reversion, or expectancy, in or to any estate after the death of any person within age, married woman, or any other person whatsoever, upon affidavit that he or she hath cause to believe that such minor, married woman, or other person, is dead, and that his or her death is concealed by a guardian, trustee, husband, or other person (a) may, once a year, if the person aggrieved shall think fit, move the Lord Chancellor to order such guardian, &c., concealing or suspected to conceal such person, at such time and place as the [Chancery Division] shall direct, on personal or other due service of such order, to produce and show to such person or persons (not exceeding two) as shall in such order be named by the party or parties prosecuting the same, such minor, married woman, or other person aforesaid.

If such guardian, &c., shall refuse or neglect to produce or show such infants, &c., according to the directions of the order, the court shall order such guardian, &c., to produce such minor, &c., in the [Chancery Division], or otherwise before commissioners to be appointed by the court, two of whom shall be nominated by the party prosecuting such order at his costs and charges.

In case such guardian, &c., shall refuse or neglect so to produce such infant, &c., the said minor, &c., shall be taken to be dead, and entry may be made by the person next entitled as if such infant, &c., were actually dead.

Where *cestui que vie* beyond seas.

2. If it shall appear to the court by affidavit that such minor, &c., is at a certain place beyond the seas, to be mentioned in the affidavit, the party prosecuting such order may at his costs and charges send over one or both the persons appointed by the said order to view such minor, &c. ; and—

In case such guardian, &c., shall refuse or neglect to produce or procure to be produced to such person or persons a personal view of such infant, &c., then, upon a true return thereof being made to the court, such minor, &c., shall be taken to be dead, and the person next entitled may enter as if such infant, &c., were actually dead.

Re-entry by *cestui que vie*.

3. If it afterwards appear upon proof in any action that such infant, &c., was alive at the time of such order made, then such infant, &c., may re-enter and bring an action for the profits received from the time that such infant, &c., was ousted of the possession.

Where *cestui que vie* cannot be compelled to appear.

4. If such guardian, &c., satisfy the court that he has used his utmost endeavours to procure such infant, &c., and that he cannot compel such infant, &c., to appear, and that such infant, &c., was living at the time of the return made, then he may

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(a) An assignee of the life interest of a tenant for life can be required to produce his *cestui que vie*: (*Re Hall*; *Ex parte Castledine*, 44 L. T. 469.)

continue in possession and receive the rent and profits during the infancy of such infant, and the life or lives of such married woman, or other person or person on whose life or lives such estate or interest depends.

5. Guardians, &c., wrongfully holding over after the determination of any life estate shall be adjudged trespassers, and damages against them may be recovered by the person next entitled. Holding over.

*An Act to enable Infants, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage.*

18 & 19 VICT. c. 43.

1. After the passing of this Act, every infant upon or in contemplation of his or her marriage may, with the sanction of the [Chancery Division], make a valid settlement, or contract for a settlement, of all, or any part of his or her property or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance, appointment, and assignment of such real and personal estate, or contract to make a conveyance, &c., thereof, executed by such infant, with the approbation of the said court, for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were twenty-one years of age. *Proviso*: This enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant. Infants may make marriage settlements.

2. In case any appointment under a power, or any disentailing assurance shall have been executed by any infant tenant in tail under the provisions of this Act, and such infant shall afterwards die under age, the same shall thereupon become void. Death after appointment, &c.

3. The sanction of the court to any such settlement or contract for such settlement, may be given upon petition presented by the infant or his or her guardian, in a summary way, without suit. If there be no guardians the court may require one to be appointed. The court may also require that any person interested, or appearing to be interested in the property, be served with notice of such petition. Sanction of court.

4. Nothing in the Act shall apply to any male infant under twenty, or any female infant under seventeen years of age. Age of infants.

*An Act to amend the Law as to the Custody of Infants.*

36 VICT. c. 12.

1. After the passing of this Act the [Chancery Division] may,

Application by  
mother for ac-  
cess or custody.

upon hearing the petition by her next friend, of the mother of any infant under sixteen years of age, order that the petitioner shall have access to such infant at such times and subject to such regulations as the court shall deem proper, or may order that such infant shall be delivered to the mother and remain in or under her control or custody, or shall, if so already, remain therein until such infant shall attain such age, not exceeding sixteen, as the court shall direct; and further may order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or otherwise, as the said court shall deem proper.

Agreement in  
separation deed.

2. No agreement contained in any separation deed between the father and mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother. *Proviso*: No court shall enforce any such agreement, if of opinion that it will not be for the infant's benefit. (a)

### *The Infants Relief Act, 1874.*

37 & 38 Vict. c. 62.

Contracts by  
infants.

1. All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void. *Proviso*: This enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

(a) An ante-nuptial promise made by an intended husband to his intended wife that the children shall be brought up in a different religion from his own is not binding at law or in equity: (*Re Agar-Ellis*, 39 L. T. 380; 10 Ch. Div. 49; 48 L. J. 1, Ch.) Where the question is simply what is most beneficial for an infant, it is unnecessary to consider whether the father is in any way precluded by his own contract from asking the aid of the court in enforcing his legal power and natural authority. The law will not permit a father to delegate his rights and powers over his infant child to the mother; and therefore, if the utmost effect were given to the separation deed, it would only place the infant in the position of a fatherless child. It is the settled rule of the court that a fatherless ward must be brought up in the religion of its father, the only exception being that where an infant ward is of sufficient age and intelligence to have received and formed, and has received and formed, other religious convictions, strong and apparently fixed, the court will shrink from the consequences of any attempt to disturb them. The court will not allow its female ward to run the risk of being brought up in opposition to the views of mankind generally as to what is moral, decent, and womanly, merely because her mother differs from those views: (*Re Mabel Emily Besant*, 40 L. T. 469; 11 Ch. Div. 508; 48 L. J. 49, Ch.)

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age, of any promise (a) or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age. Ratification.

*The Conveyancing Act, 1881.*

44 & 45 VICT. c. 41.

IX.—INFANTS.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877. (b) Sales and leases on behalf of an infant owner.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and, being a woman, is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply. Management of land and receipt and application of income during minority.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course of sale, or for repairs or otherwise, and to erect, pull down, rebuild and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions,

(a) Including a promise to marry (*Coxhead v. Mullis*, 3 C. P. Div. 439; 39 L. T. 349); but, as distinguished from a ratification, a new and distinct contract to marry may, under certain circumstances, be inferred: (*Ditcham v. Worrall*, 43 L. T. 286; 5 C. P. Div. 410; 49 L. J. 688, C. P.)

(b) See *post*, title "Settled Estate."

on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments, and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were the income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land

may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

Application by trustees of income of property of infant for maintenance, &c.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

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## INHERITANCE.

*An Act for the Amendment of the Law of Inheritance.*

3 & 4 WILL. 4, c. 106.

2. In every case descent shall be traced from the purchaser. "Purchaser."



The person last entitled to the land who did not inherit shall be considered the purchaser.

Heir takes as devisee.

3. When any land shall have been devised by any testator who shall die after the 31st day of December, 1833, to the heir, or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent.

Estate by purchase.

When any land shall have been limited by any assurance executed after the 31st December, 1833, to the person who shall thereby have conveyed the same land or his heirs, such person shall be considered to have acquired the same as a purchaser.

4. When any purchaser shall have acquired any land by purchase under a limitation to the heirs, or to the heirs of the body of any of his ancestors, contained in an assurance executed after the 31st December, 1833, or under a limitation to the heirs, or to the heirs of the body, of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall die after that day, such land shall descend as if the ancestor named in such limitation had been the purchaser.

Descent from brother or sister.

5. No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parents.

Admission of ancestors.

6. Every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor, to any of his issue other than a nearer lineal ancestor or his issue.

7. None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed.

No female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed.

No female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

8. Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced and their descendants, the mother of his more remote male paternal ancestor or her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor or her descendants.



Where there shall be a failure of male maternal ancestors of such person and their descendants, the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

9. Any person related to the person from whom descent is to be traced, by the half blood, shall be capable of being his heir, and the place in which any such relation shall stand in the order of inheritance so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

Admission of half blood.

10. When the person from whom the descent is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, such attainder shall not prevent his descendants from inheriting as if he had not been attainted.

11. This Act shall not extend to any descent on the death of a person before the 1st of January, 1834.

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*An Act to further Amend the Law of Property, and to Relieve Trustees.*

22 & 23 VICT. c. 35.(a)

19. Where there shall be a total failure of heirs of the purchaser, or where any land shall be descendible as if an ancestor had been the purchaser, and there shall be a total failure of the heirs of such ancestor, the land shall descend, and the descent shall be traced from the person last entitled, as if he had been the purchaser.

Failure of heirs of purchaser.

20. Sect. 19 shall be read as part of the 3 & 4 Will. 4, c. 106.

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INNKEEPERS.

*An Act to Amend the Law respecting the Liability of Innkeepers, and to prevent certain Frauds upon them.*

26 & 27 VICT. c. 41.

1. No innkeeper shall be liable to make good to any guest of

Limitation of liability.

(a) For other sections of this Act, see titles, "Leases" and "Real Property (Miscellaneous Act)."

such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage to a greater amount than 30*l.* except—

(1.) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or his servant.

(2.) Where the same shall have been deposited expressly for safe custody with such innkeeper.

*Proviso:* In case of such deposit, the innkeeper may require as a condition of his liability, that such goods or property shall be deposited in a box, or other receptacle, fastened and sealed by the depositor.

Refusal to  
receive goods.

2. If any innkeeper shall refuse to receive for safe custody any goods or property of his guest, or if such guest shall through any default of such innkeeper be unable to deposit the same, such innkeeper shall not be entitled to the benefit of this Act in respect of the same.

Copy of sect. 1 to  
be conspicuously  
exhibited.

3. Every innkeeper shall cause at least one copy of sect. 1 (a) printed in plain type to be exhibited in a conspicuous part of the hall or entrance to his inn, and shall be entitled to the benefit of this Act in respect of such goods or property only as shall be brought to his inn while such copy shall be so exhibited.

"Inn."

4. "Inn" shall mean hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guest.

### *The Innkeepers Act, 1878.*

41 & 42 VICT. c. 38.

Power to land-  
lords, &c., to  
dispose of goods  
left with them.

1. The landlord, proprietor, keeper, or manager of any hotel, inn, or licensed public-house shall, in addition to his ordinary lien (b), have the right absolutely to sell and dispose by public auction of any goods, chattels, carriages, horses, wares, or merchandise which may have been deposited with him or left in the house he keeps, or in the coach-house, stable, stable-yard, or other premises appurtenant or belonging thereunto, where the person depositing or leaving such goods, chattels, carriages, horses, wares, or merchandise shall be or become indebted to the said innkeeper either for any board or lodging or for the keep and

(a) It must be a correct copy of the section. Where the word "Act" in sub-sect. (1) was omitted, the omission was held to be material, and the innkeeper not protected by the statute: (*Spice v. Bacon*, 2 Q. B. Div. 468.)

(b) As to the lien of innkeepers, see *Mulliner v. Florence* (3 Q. B. Div. 484).

expenses of any horse or other animals left with or standing at livery in the stables or fields occupied by such innkeeper.

Provided that no such sale shall be made until after the said Proviso. goods, chattels, carriages, horses, wares, or merchandise shall have been for the space of six weeks in such charge or custody or in or upon such premises without such debt having been paid or satisfied, and that such innkeeper, after having, out of the proceeds of such sale, paid himself the amount of any such debt, together with the costs and expenses of such sale, shall on demand pay to the person depositing or leaving any such goods, chattels, carriages, horses, wares, or merchandise the surplus (if any) remaining after such sale: Provided further, that the debt for the payment of which a sale is made shall not be any other or greater debt than the debt for which the goods or other articles could have been retained by the innkeeper under his lien.

Provided also, that at least one month before any such sale the Notice of sale. landlord, proprietor, keeper, or manager shall cause to be inserted in one London newspaper and one country newspaper circulating in the district where such goods, chattels, carriages, horses, wares, or merchandise, or some of them, shall have been deposited or left, an advertisement containing notice of such intended sale, and giving shortly a description of the goods and chattels intended to be sold, together with the name of the owner or person who deposited or left the same, where known.

### INTEREST.(a)

*An Act for the further Amendment of the Law and the better Advancement of Justice.*

#### 3 & 4 WILL. 4, c. 42.(b)

28. Upon all debts or sums certain payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquiry of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate from the time when such debts or sums were payable if payable by virtue of some written instrument at a certain time, or if payable otherwise, from demand of payment in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until payment. Jury may allow interest in certain cases.

29. The jury in the above cases may, if they shall think fit,

(a) As to interest on judgments, see 1 & 2 Vict. c. 110, s. 17, title "Judgments, *post*, p. 140.

(b) For other sections of this Act, see titles, "Limitation of Actions (Miscellaneous Acts)," and "Trustees, Executors, and Administrators," *post*.

give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure in actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in actions on policies of assurance made after the passing hereof.

## JUDGMENT DEBTOR.

*An Act for the better securing the payment of small Debts.*

8 & 9 VICT. c. 127.

Wearing  
apparel, &c.

8. The wearing apparel and bedding of any judgment debtor or his family, and the tools and implements of his trade, the value of the same not exceeding 5*l.* in the whole, shall not be liable to seizure under any execution or order of any court against his goods and chattels.

*The Debtors Act, 1869.*

32 & 33 VICT. c. 62.

### PART I.—*Abolition of Imprisonment for Debt. (a)*

No arrest for  
debt except in  
certain cases.

4. No person shall be arrested or imprisoned for making default in payment of a sum of money.

#### *Exceptions. (b)*

- (1.) Default in payment of a penalty or sum in the nature of a penalty other than a penalty in respect of any contract.
- (2.) Default in payment of any sum recoverable before a justice of the peace.
- (3.) Default by a trustee or person acting in a fiduciary capacity (c) and ordered to pay by a court of equity any sum in his possession or under his control. (d)
- (4.) Default by a solicitor when ordered to pay costs for misconduct, as such, or in payment of a sum of money when ordered to pay the same in his character of officer of the court. (d)

(a) For Part II. of this Act, see Part III. of this work.

(b) Crown debts are to be added to these exceptions: (*Re Smith*, 2 Ex. Div. 47.)

(c) Not a promoter of a company: (*Phosphate Sewage Company v. Hartmont*, 25 W. R. 748.)

(d) See 41 & 42 Vict. c. 54, *infra*. Sub-sect. 3 extends to the case of a trustee who has parted with the money before the order for payment: (*Middleton v. Chichester*, 40 L. J. 287, Ch.) Under this sub-section it is

(5.) Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order.

(6.) Default in payment of sums ordered to be paid by sect. 5.

*Proviso* : No person shall be imprisoned in case of any of the above exceptions for more than a year.

5. (a) Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment (b) of any debt due from him in pursuance of an order or judgment of that or any other competent court. *Proviso* : Such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default has or has had means to pay since the date of the order or judgment, and has refused or neglected, or refuses or neglects to pay the same. (c)

Power to court to commit in certain cases.

The jurisdiction given by this Act may be exercised by a judge at chambers.

Any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may rescind or vary such order.

Imprisonment under this section shall not operate as a satisfaction of the debt.

6. Arrest upon mesne process is abolished. Where the plaintiff in an action in any of the superior courts of law, in which, if brought before the commencement of this Act the defendant would have been liable to arrest, proves, before final judgment, to the satisfaction of a judge of one of those courts that he has a good cause of action to the amount of 50*l.* or upwards, and that there is probable cause for believing that the defendant is about to quit England and that his absence will materially prejudice the plaintiff in the prosecution of his action,

Where debtor about to quit England.

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sufficient, on application for an attachment, to show that the debtor received the money "in a fiduciary capacity" towards any person entitled to call upon him to pay: (*Marris v. Ingram*, 41 L. T. 618; 18 Ch. Div. 338; 49 L. J. 123, Ch.)

(a) See sect. 103 of the Bankruptcy Act, 1883, *post*, Part III.

(b) In case of an order for payment by instalments, there may be a commitment for default on each instalment: (*Horsenail v. Bruce*, 8 O. P. 878; *Evans v. Wills*, 1 O. P. Div. 229.)

(c) When on a motion under this section to commit a defaulting debtor to prison, the judge has the proper materials before him, and is satisfied that the debtor has the means to pay, and makes the order asked for, the Court of Appeal will not interfere with the decision: (*Esdaile v. Visser*, 41 L. T. 745.)

such judge may order the defendant to be arrested and imprisoned for not more than six months, unless and until he has sooner given security that he will not go out of England without the leave of the court. (a) Where the action is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

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*The Debtors Act, 1878.*

41 & 42 VICT. c. 54.

Discretion of  
judge in certain  
cases within the  
Debtors Act,  
1869.

1. In any case coming within either of the exceptions numbered 3 and 4 in the 4th section of the Debtors Act, 1869, any court or judge making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and, subject to the proviso contained in the said section, may grant or refuse, either absolutely or upon terms, any application for a bill of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such suit, process, or order, or for discharge from arrest or imprisonment thereunder. (b)

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(a) The defendant cannot be detained in prison after judgment signed: (*Hume v. Drvyff*, 8 Ex. 214.) A writ of *ne exeat regno* can be granted in those cases only which fall within this section: (*Hands v. Hands*, 43 L. T. 750.)

(b) The Debtors Act, 1869, has, among its intended objects, the punishment of dishonest debtors. The Debtors Act, 1878, is intended to give a discretion to the judge where a debtor is within the penal clauses of the Debtors Act, 1869, but may not in the judge's opinion, be guilty of a moral offence. Mere inability to pay is not in itself a valid ground for the exercise of the discretion given by the Debtors Act, 1878: (*Marris v. Ingram*, 41 L. T. 618; 13 Ch. Div. 388; 49 L. J. 128, Ch.) The policy of the Debtors Acts, 1869 and 1878, as to the imprisonment of defaulting trustees, whether vindictive or not in the case of a fraudulent and dishonest debtor, gives the court a judicial discretion in dealing with exceptional cases; therefore, where a trustee, who had erroneously misapplied trust funds by lending on an insufficient security, had been ordered to pay the amount so misapplied into court, and stated by affidavit that he had no means at present of complying with the order, the court refused to grant leave to issue a writ of attachment against him: (*Holroyd v. Garnett*, 46 L. T. 801; 20 Ch. Div. 582; 51 L. J. 668, Ch.)

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## JUDGMENTS.

*An Act for Abolishing Arrest on Mesne Process, &c.*

1 &amp; 2 VICT. c. 110.

14. If any person against whom any judgment shall have been entered up in any of the superior courts shall have any Government stock, funds, or annuities, or any stock or shares of, or in any public company in England, standing in his name in his own right, or in the name of any person in trust for him (a), a judge of one of the superior courts may on the application of any judgment creditor order that such stock, funds, annuities, or shares, or such or them, or such part thereof respectively, as he shall think fit, shall stand charged with the payment of the amount of the judgment debt and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor. *Proviso*: No proceedings shall be taken to have the benefit of such charge until after six calendar months from the date of the order. (b)

15. Every such order shall be made in the first instance *ex parte*, without notice to the judgment debtor, and shall be an order to show cause only.

Such order shall, as regards the Bank of England, act similarly to a *distringas*, and as regards a public company shall restrain any transfer of stock, or shares standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him.

If any such transfer be permitted after notice of the order, and before the same be discharged or made absolute, the corporation, or person or persons permitting such transfer, shall be liable to the judgment creditor for the value or amount of the property so charged, and so transferred, or such part thereof as may be sufficient to discharge his judgment.

No disposition of the judgment debtor in the meantime shall be valid as against the judgment creditor.

Unless within the time mentioned in the order sufficient cause be shown to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his [solicitor], or agent, be made absolute.

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(a) Stock standing in the name of the Paymaster-General is within this section: (*Hulkes v. Day*, 10 Sim. 41.) By the 3 & 4 Vict. c. 82, this section is to extend to any interest of the debtor in such stock, &c., whether in possession, remainder, or reversion, and whether vested or contingent.

(b) Proceedings may, however, be taken, if necessary, to protect the subject-matter of the charging order before the expiration of the six months: (*Bristed v. Wilkins*, 3 Hare, 235.)

Power to any such judge upon application of the judgment debtor, or any person interested, to discharge or vary such order, and award such costs as he may think fit.

Interest.

17. Every judgment debt shall carry interest at the rate of 4l. per cent. per annum from the time of entering up the judgment until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.

19. This section provides that a judgment shall be registered as therein mentioned in order to affect the lands as against purchasers, mortgagees, or creditors.

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*An Act to further Amend the Law of Property and to relieve Trustees.*

22 & 23 VICT. c. 35. (a)

Release of part  
of hereditaments  
charged.

11. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice to the rights of all persons interested in the hereditaments or property remaining unreleased and not concurring in or confirming the release.

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*An Act to further Amend the Law of Property.*

23 & 24 VICT. c. 38. (b)

Land not to be  
bound by judg-  
ments unless  
writ of execution  
registered.

1. No judgment, statute, or recognisance to be entered up after the passing of this Act shall affect any land (of whatever tenure) as to a *bonâ fide* purchaser for valuable consideration, or a mortgagee (whether such purchaser or mortgagee have notice or not of any such judgment, &c.), unless a writ or other due process of execution of such judgment, &c., shall have been issued and registered as hereinafter is mentioned before the execution of the conveyance or mortgage to him, and the payment of the purchase or mortgage money by him. *Proviso:* No judgment, &c., to be entered up after the passing of this Act, nor any writ of execution or other process thereon shall affect any land of whatever tenure as to a *bonâ fide* purchaser or mortgagee, although execution or other process shall have been issued thereon and have been duly registered, unless such execution or other process shall be executed and put in force within three months from the time when it was registered.

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(a) For other sections of this Act, see titles "Leases," "Real Property (Miscellaneous Acts)," and "Trustees, Executors, and Administrators."

(b) For other sections of this Act, see titles "Leases," "Limitation of Actions (Miscellaneous Acts)," and "Real Property (Miscellaneous Acts)."



2. The registry required of any writ, &c., of execution shall be made by a memorandum or minute referring to the judgment, &c., which shall be left with the senior master of the Court of Common Pleas (*a*), who shall enter the particulars in a book in alphabetical order [by the name of the debtor]. Registry of writ.

*An Act to Amend the Law relating to future Judgments,  
Statutes, and Recognisances.*

27 & 28 VICT. c. 112.

1. No judgment, statute, or recognisance to be entered up after the passing of this Act shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution by virtue of a writ of *elegit*, or other lawful authority in pursuance of such judgment, &c. (*b*) Lands not to be bound until delivered in execution.

2. "Judgment" shall include registered decrees and orders having the operation of judgments. Interpretation of terms.

"Land" shall include corporeal and incorporeal hereditaments, or any interest therein.

"Debtor" shall include husbands of married women, [trustees] of bankrupts, committees of lunatics, and heirs or devisees of deceased persons.

3. Every writ or other process of execution of any such judgment, &c., by virtue whereof any land shall have been actually delivered in execution shall be registered as provided by the 23 & 24 Vict. c. 38, in the name of the debtor, and no other registration shall be necessary. Registry of writ.

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(*a*) By 42 & 43 Vict. c. 78, the office of the registrar of judgments has been amalgamated with the Central Office.

(*b*) A judgment creditor became transferee of a mortgage of lands belonging to the debtor. He then issued a writ in the Chancery Division, claiming an account of what was due to him on both mortgage and judgment, and an order for payment, with or without relief; and on the same day he obtained an *ex parte* order for an interim receiver extending over seven days. At the expiration of the seven days he obtained, on motion upon notice, an order absolute for appointment of the same person to be receiver on giving security. On the same day the debtor filed a liquidation petition, and a motion in bankruptcy by the trustee in the liquidation to stay the action was refused. The creditor had not sued out an *elegit*. Held, that the appointment of the receiver was such a delivery in execution of the mortgaged lands by lawful authority within this section as to render the judgment creditor a "secured creditor" within sect. 16 (5) of the Bankruptcy Act, 1869; and that he was entitled to hold the lands comprised in the mortgage deed as a security for his judgment, as well as for his mortgage debt. Since the Judicature Acts came into operation it is unnecessary for a judgment creditor, who seeks to affect a purely equitable interest of his debtor in land, to issue a writ of *elegit*: (*Ex parte Evans*; *Re Watkins*, 41 L. T. 565; 11 Ch. Div. 691; 13 Ch. Div. 252; 48 L. J. 97. Bank.)

Sale of land  
delivered in  
execution.

4. Every creditor to whom any land of his debtor (a) shall have been actually delivered in execution by virtue of any such judgment, &c., and whose process of execution shall be duly registered, shall be entitled forthwith, or at any time afterwards, while the registry of such process shall continue in force, to obtain from the [Chancery Division] upon petition, in a summary way an order for the sale of his debtor's interest in such land, and every such petition may be served upon the debtor only, and thereupon the court shall direct all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as shall appear to be necessary or proper, and in carrying into effect such order for sale, the practice of the said court with respect to sales of real estates of deceased persons for payment of debts shall be followed as far as the same may be found conveniently applicable.

5. If it shall appear on making such inquiries, that any other debt due on any judgment, &c., is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner), shall be served with notice of the order for sale, and shall then be bound thereby and be at liberty to attend the proceedings under the same, and have the benefit thereof. The proceeds of the sale shall be distributed among the persons who may be found entitled thereto according to their respective priorities.

6. Every person claiming any interest in such land through or under the debtor by any means subsequent to the delivery of such land in execution as aforesaid shall be bound by such order and the proceedings thereon.

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*The Judgments Extension Act, 1868.*

31 & 32 VICT. c. 54.

By this Act a judgment of a *superior* court of England, Scotland, or Ireland, is rendered as effectual as regards execution in either of the other two parts of the United Kingdom, if registered there, as if originally obtained there.

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*Inferior Courts Judgments Extension Act, 1882.*

45 & 46 VICT. c. 31.

By this Act a judgment of an *inferior* court of England, Scotland, or Ireland, is rendered as effectual as regards execution

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(a) Only lands which the debtor could himself have sold: (*Re Bishop's Waltham Railway Company*, 2 Ch. 382.)

in either of the other two parts of the United Kingdom, if registered there, as if originally obtained there.

## LANDLORD AND TENANT.

*An Act for the better Security of Rents, and to prevent Frauds committed by Tenants.*

8 ANNE, c. 14.

1. No goods or chattels being in or upon any messuage, lands, or tenements leased for life, for years (a) at will, or otherwise, shall be liable to be taken in execution, unless the party issuing the same shall, before the removal of such goods from off the said premises by virtue of such execution, pay to the landlord or his bailiff such sum as shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided the arrears of rent do not amount to more than one year's rent, and in case the said arrears shall exceed one year's rent, the party issuing execution, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment. Right of landlord as against execution creditor.

6 and 7. Any person or persons having any rent in arrear, or due upon any lease for life, for years, or at will, ended or determined, may distress for such arrears after the determination of the said respective leases in the same manner as if such lease or leases had not been ended or determined; provided that such distress be made within six calendar months after such determination, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due. Distress after determination of lease.

*An Act for the more effectually preventing Frauds committed by Tenants, and for the more easy Recovery of Rents and Renewal of Leases.*

4 GEO. 2, c. 28.

1. In case any tenant or tenants for life or years (b) or other person or persons, who shall come into possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term or terms, and after demand made, or notice in writing Tenant holding over after notice to quit from landlord.

(a) Where the tenancy is less than yearly, see 7 & 8 Vict. c. 96, *infra*; and 19 & 20 Vict. c. 108, s. 75, *post*, Part II., title "Statutes Relating to the County Courts."

(b) A weekly tenant is not within the Act: (*Lloyd v. Rosbee*, 2 Camp 453.)

given, for delivering the possession thereof, by his or their landlords or lessors, or the person or persons to whom the remainder or reversion of such lands, &c., shall belong, his or their agent or agents thereunto lawfully authorised, then such person or persons so holding over, shall, during the time he, she, or they shall so hold over or keep the person or persons entitled out of possession of the said lands, &c., pay to the person or persons so kept out of possession, their executors, administrators, or assigns, at the rate of double the yearly value of the lands, &c., so detained, for so long time as the same are detained, to be recovered by action of debt.

5. Power to distrain for rents seck.

*An Act for the more effectual Securing the Payment of Rents, and preventing Frauds by Tenants.*

11 GEO. 2, c. 19.

Fraudulent  
removal.

1 and 2. Power to landlords to distrain and sell goods fraudulently or clandestinely carried off the premises to prevent distress, within thirty days, unless *bonâ fide* sold to any person not privy to the fraud (a)

3. Every person so offending shall pay to the landlord double the value of the goods so removed, to be recovered by action of debt, but—

4. Where the value of the goods does not exceed 50*l.*, summary proceedings may be taken before two justices of the peace, from whom—

5. An appeal shall lie to the quarter sessions.

7. Power to landlords (subject as in this section mentioned), to break open houses, &c., to seize goods fraudulently secured therein, to prevent distress.

Power to distrain  
cattle and crops.

8. Power to landlords to distrain stock or cattle and crops on the demised premises for arrears of rent.

9. Notice shall be given to the tenant of the place where the goods distrained shall be lodged. In the case of crops, the distress shall cease if the rent be paid before they are cut.

Desertion of  
premises.

16 and 17. Provisions as to summary proceedings before two justices when tenants desert the premises and [half] a year's rent is in arrear.

Tenant holding  
over after giving  
notice to quit.

18. In case any tenant shall give notice of his intention to quit at a time mentioned in such notice, and shall not deliver up possession at the time in such notice contained, he shall pay to the landlord double the rent which he should otherwise have

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(a) The removal must have taken place after the rent became due: (*Watson v. Main*, 3 Esp. 16.)

paid, to be recovered in the same manner as the simple rent, and such double rent shall continue to be paid during all the time such tenant shall continue in possession aforesaid.

19. Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining or his agent, the distress shall not be deemed unlawful nor the party making it a trespasser *ab initio*, but the party aggrieved may recover full satisfaction for the special damage sustained and no more, but—

Irregularity in distress.

20. If the party distraining or his agent has made tender of amends before action, such tenant shall not recover.

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*An Act to amend the Law of Insolvency, &c.*

7 & 8 VICT. c. 96.

No landlord of any tenement let at a weekly rent shall have any claim or lien on any goods taken in execution under the process of any court of law for more than four weeks' arrears of rent; and if such tenement shall be let for any other term less than a year the landlord shall not have any claim or lien on such goods for more than the arrears of rent accruing during four such terms or times of payment.

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*An Act to improve the Law of Landlord and Tenant, in relation to Emblements, to growing Crops seized in execution, and to Agricultural Tenants' Fixtures.*

14 & 15 VICT. c. 25.

1. Where the lease or tenancy of any farm or lands held by a tenant at a rack-rent shall determine by the death or cesser of the estate of any landlord entitled for his life or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit upon the terms of his lease or holding, in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate.

Holding on in lieu of emblements.

The succeeding landlord or owner shall be entitled to recover and receive of the tenant in the same manner as his predecessor or such tenant's lessor could have done, a fair proportion of the rent from the day of the death or cesser of the estate of such predecessor, to the time of the tenant so quitting; and the succeeding landlord or owner and the tenant respectively shall, as between themselves, and as against each other, be entitled to

all the benefits and advantages, and be subject to the terms, conditions, and restrictions, to which the preceding landlord or lessor and such tenant respectively would have been entitled and subject in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year.

No notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.

Liability of crops  
seized by sheriff  
to distress for  
rent.

2. In case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer under execution, such crops, while remaining on the farm or lands, shall, in default of sufficient distress, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, notwithstanding any assignment thereof by such sheriff or other officer.

Fixtures.

3. (a) If any tenant of a farm or lands shall, after the passing of this Act, with the consent in writing of the landlord for the time being, at his own cost and expense, erect any farm building, or put up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), all such buildings and machinery shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same, or any part thereof, may be built in, or permanently fixed to the soil, so as the tenant making any such removal do not injure the land or buildings of the landlord, or otherwise do put the same in as good condition as the same were before the erection of anything so removed. *Proviso:* No tenant shall under this section be entitled to remove any such thing as aforesaid without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and the landlord, or his agent on his authority, may elect to purchase the things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be determined by two referees (one to be chosen by each party), or their umpire, and shall be paid or allowed in account by the landlord.

Tithe rent-  
charge.

4. In case of a tenant leaving any tithe rentcharge unpaid, the landlord, or succeeding tenant, or occupier, may pay the same and any expenses incident thereto, and recover the amount from the first-named tenant or occupier, or his legal representatives, as if it were a simple contract debt.

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(a) See the further provisions as to fixtures in sect. 34 of 46 & 47 Vict. c. 61, *infra*.

*An Act to amend the Process, Practice, and mode of Pleading in the Superior Courts of Common Law, &c.*

15 & 16 Vict. c. 76.

209. Every tenant to whom any writ in ejectment (a) shall be delivered or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' rack rent of the premises demised or holden in the possession of such tenant, to the person of whom he holds. Duty of tenant with notice of writ in ejectment.

210. In all cases between landlord and tenant (b), as often as it shall happen that half a year's rent shall be in arrear, and the landlord or lessor to whom the same is due, has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, proceed in ejectment for recovery of the premises; and in case of judgment against the defendant for non-appearance, if it shall be made appear to the court by affidavit, or be proved upon the trial in case of appearance, that half a year's rent was due before service of the writ, and no sufficient distress was to be found on the premises, the lessor shall recover judgment as if the rent had been legally demanded, and a re-entry made. When landlord may bring action to recover the premises.

Such judgment shall be final, (1) unless before execution the rent and costs shall be paid, (2) unless within six months after execution proceedings for relief shall be taken. *Proviso:* Nothing herein contained shall bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession so as such mortgagee shall, within six months after such judgment obtained and execution enforced, pay the rent and all costs and damages sustained by such lessor or person entitled, and perform all the covenants and agreements which, on the part of the first lessee, are or ought to be performed.

212. If the tenant or his assignee shall, at any time before the trial, pay or tender to the lessor or landlord, his executors or administrators, or his or their [solicitor] in that cause, or pay into court the rent and costs, the proceedings shall cease. Payment before trial.

214. On the trial of any ejectment between landlord and tenant, the jury may award damages for mesne profits down to the time of the verdict, or to some preceding day to be specially mentioned therein, without prejudice to the landlord's right to mesne profits, from the verdict or day so specified to the day of delivery of possession. Mesne profits.

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(a) An action of ejectment is, by the Rules of the Supreme Court, called "an action to recover the possession of land."

(b) This includes the assignee of a lessee (*Doe d. Whitfield v. Roe*, 3 Taunt. 402); and a sub-lessee (*Doe d. Wyatt v. Byron*, 1 C. B. 628).

*Lodgers' Goods Protection Act.*

34 &amp; 35 VICT. c. 79.

Lodger, where distress levied, may make declaration, &c.

1. If any superior landlord shall levy a distress on any goods of a lodger (*a*) for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord or person employed to levy such distress with a declaration made by such lodger setting forth that such immediate tenant has no right or interest in such goods, and that the same are the property of such lodger; and also setting forth what rent (if any) is due from such lodger to his immediate landlord; and such lodger may pay to the superior landlord or person employed by him as aforesaid such rent or so much thereof as shall be sufficient to discharge his claim. The lodger shall sign and annex to the declaration a correct inventory; and if he make such declaration and inventory knowing the same or either of them to be untrue in any material particular he shall be deemed guilty of a misdemeanour.

Penalty.

2. In case the lodger shall act in accordance with sect. 1, and such superior landlord or person employed by him shall proceed with the distress, he shall be deemed guilty of an illegal distress; and redress may be had by application to a stipendiary magistrate or two justices of the peace, and by action at law.

*The Agricultural Holdings (England) Act, 1883.*

46 &amp; 47 VICT. c. 61.

PART I.—*Improvements.**Compensation for Improvements.*

General right of tenant to compensation.

1. Subject as in this Act mentioned, where a tenant has made on his holding any improvement comprised in the first schedule hereto, he shall, on and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an incoming tenant: Provided always, that in estimating the value of any improvement in the first schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

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(*a*) An occupier of part of a house is not a "lodger" within the meaning of the Act unless the person under whom he holds retains some control and dominion over the house: (*Morton v. Palmer.*)



*As to Improvements executed before the Commencement of Act.*

2. Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with the exceptions following, that—

Restriction as to improvements before Act.

(1.) Where a tenant has within ten years before the commencement of this Act made an improvement mentioned in the third part of the first schedule hereto, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement; or

38 & 39 Vict. c. 92.

(2.) Where a tenant has executed an improvement mentioned in the first or second part of the said first schedule within ten years previous to the commencement of this Act, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement, and the landlord within one year after the commencement of this Act declares in writing his consent to the making of such improvement, then such tenant on quitting his holding at the determination of a tenancy after the commencement of this Act may claim compensation under this Act in respect of such improvement in the same manner as if this Act had been in force at the time of the execution of such improvement.

*As to Improvements executed after the Commencement of Act.*

3. Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the first schedule hereto, and executed after the commencement of this Act, unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

Consent of landlord as to improvement in first schedule, Part I.

4. Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part of the first schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his agent duly authorised in that behalf, notice in writing of his intention so to do, and of the manner in

Notice to landlord as to improvement in first schedule, Part II.

which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

Reservation as to  
existing and  
future contracts  
of tenancy.

5. Where, in the case of a tenancy under a contract of tenancy current at the commencement of this Act any agreement in writing or custom, or the Agricultural Holdings (England) Act, 1875, provides specific compensation for any improvement comprised in the first schedule hereto, compensation in respect of such improvement, although executed after the commencement of this Act, shall be payable in pursuance of such agreement, custom, or Act of Parliament, and shall be deemed to be substituted for compensation under this Act.

Where in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement mentioned in the third part of the first schedule hereto, and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply, in the case of a tenancy under a contract of tenancy current at the commencement of this Act, in respect of an improvement mentioned in the third part of the first schedule hereto, specific compensation for which is not

provided by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875.

*Regulations as to Compensation for Improvements.*

6. In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there shall be taken into account in reduction thereof :

*Regulations as to compensation for improvements.*

- (a.) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement ; and
- (b.) In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom ; and
- (c.) Any sums due to the landlord in respect of rent or in respect of any waste committed or permitted by the tenant, or in respect of any breach of covenant or other agreement connected with the contract of tenancy committed by the tenant, also any taxes, rates, and tithe rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord.

There shall be taken into account in augmentation of the tenant's compensation—

- (d.) Any sum due to the tenant for compensation in respect of a breach of covenant or other agreement connected with a contract of tenancy and committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste by the tenant or of breach by the tenant committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

*Procedure.*

7. A tenant claiming compensation under this Act shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to make such claim.

*Notice of intended claim.*

Where a tenant gives such notice, the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste or any breach of covenant or other agreement.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

Compensation  
agreed or settled  
by reference.

8. The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

Appointment of  
referee or  
referees and  
umpire.

9. Where there is a reference under this Act a referee, or two referees and an umpire, shall be appointed as follows :

- (1.) If the parties concur, there may be a single referee appointed by them jointly :
- (2.) If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed :
- (3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee :
- (4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act, fails to act, the party appointing him shall appoint another referee :
- (5.) Notice of every appointment of a referee by either party shall be given to the other party :
- (6.) If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the County Court shall within fourteen days appoint a competent and impartial person to be a referee :
- (7.) Where two referees are appointed, then (subject to the provisions of this Act) they shall before they enter on the reference appoint an umpire :
- (8.) If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire :
- (9.) If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the County Court shall within fourteen days appoint a competent and impartial person to be the umpire.
- (10.) Every appointment, notice, and request under this section shall be in writing :

Requisition for  
appointment of  
umpire by Land  
Commissioners,  
&c.

10. Provided that, where two referees are appointed, an umpire may be appointed as follows :

- (1.) If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be

appointed by the Land Commissioners for England, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those commissioners.

- (2.) In every other case, if either party on appointing a referee requires, by notice in writing to the other, that the umpire shall be appointed by the County Court, then, unless the other party dissents by notice in writing therefrom, the umpire, and any successor to him, shall on the application of either party be so appointed, and in case of such dissent the umpire, and any successor to him, shall be appointed, on the application of either party, by the Land Commissioners for England.

11. The powers of the County Court under this Act relative to the appointment of a referee or umpire shall be exercisable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the court. Exercise of powers of County Court.

12. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other. Mode of submission to reference.

13. The referee or referees or umpire may call for the production of any sample, or voucher, or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matter referred, and may take examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury. Power for referee, &c., to require production of documents, administer oaths, &c.

14. The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties. Power to proceed in absence.

15. The award shall be in writing, signed by the referee or referees or umpire. Form of award.

16. A single referee shall make his award ready for delivery within twenty-eight days after his appointment. Time for award of referee or referees.

Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.

Award in respect  
of compensation  
under sects. 3, 4,  
and 5.

17: In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement, if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for, and the award shall, when necessary, distinguish such improvements and the amount awarded in respect thereof; and an award given under this section shall be subject to the appeal provided by this Act.

Reference to and  
award by  
umpire.

18. Where two referees are appointed and act, if they fail to make their award ready for delivery within the time aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the County Court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

Award to give  
particulars.

19. The award shall not award a sum generally for compensation, but shall, so far as possible, specify—

- (a.) The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account under the provisions of this Act in reduction or augmentation of such compensation;
- (b.) The time at which each improvement, act, or thing was executed, done, committed, or permitted;
- (c.) The sum awarded in respect of each improvement, act, matter, and thing; and
- (d.) Where the landlord desires to charge his estate with the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.

Costs of  
reference.

20. The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case.

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the registrar of the County Court, on the application of either party, but that taxation shall be subject to review by the judge of the County Court.

21. The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise. Date for payment.

22. A submission or award shall not be made a rule of any court, or be removable by any process into any court, and an award shall not be questioned otherwise than as provided by this Act. Submission not to be removable, &c.

23. Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the County Court on all or any of the following grounds: Appeal to County Court.

1. That the award is invalid;
2. That the award proceeds wholly or in part upon an improper application of or upon the omission properly to apply the special provisions of sections three, four, or five of this Act;
3. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation;
4. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation;

and the judge shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

If no appeal is so brought, the award shall be final.

The decision of the judge of the County Court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the County Court shall act thereon.

24. Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the judge of the County Court, as money ordered by a Recovery of compensation.



County Court under its ordinary jurisdiction to be paid is recoverable.

Appointment of  
guardian.

25. Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.

Provisions  
respecting  
married women.

26. Where the appointment of a person to act as the next friend of a married woman is required for the purposes of this Act, the County Court may make such appointment, and may remove or change that next friend if and as occasion requires.

45 & 46 Vict. c. 75.

A woman married before the commencement of the Married Women's Property Act, 1882 (*a*), entitled for her separate use to land, her title to which accrued before such commencement as aforesaid, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other woman married before the commencement of the Married Women's Property Act, 1882, is desirous of doing any act under this Act in respect of land, her title to which accrued before such commencement as aforesaid, her husband's concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

Costs in County  
Court.

27. The costs of proceedings in the County Court under this Act shall be in the discretion of the court.

Service of notice,  
&c.

28. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served.

#### *Charge of Tenant's Compensation.*

Power for land-  
lord on paying  
compensation to  
obtain charge.

29. A landlord, on paying to the tenant the amount due to him in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, or on expending such amount as may be necessary to execute an improvement under the second

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(a) 1st Jan., 1883.



part of the first schedule hereto, after notice given by the tenant of his intention to execute such improvement in accordance with this Act, shall be entitled to obtain from the County Court a charge on the holding, or any part thereof, to the amount of the sum so paid or expended.

The court shall, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, make an order charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the court thinks fit.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will in the opinion of the court, after hearing such evidence (if any) as it thinks expedient, have become exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

The estate or interest of any landlord holding for an estate or interest determinable or liable to forfeiture by reason of his creating or suffering any charge thereon shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

Capital money arising under the Settled Land Act, 1882 (a), 45 & 46 Vict. c. 38. may be applied in payment of any moneys expended and costs incurred by a landlord under or in pursuance of this Act in or about the execution of any improvement mentioned in the first or second parts of the schedule hereto, as for an improvement authorised by the said Settled Land Act; and such money may also be applied in discharge of any charge created on a holding under or in pursuance of this Act in respect of any such improvement as aforesaid, as in discharge of an incumbrance authorised by the said Settled Land Act to be discharged out of such capital money.

30. The sum charged by the order of a County Court under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the interest of the landlord, his

Incidence of charge.

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(a) See *post* title "Settled Estates."

executors, administrators, and assigns, in the tenancy where the landlord is himself a tenant of the holding.

Provision in case  
of trustee.

31. Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or in any character otherwise than for his own benefit, the amount due from such landlord in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, shall be charged and recovered as follows and not otherwise; (that is to say,)

- (1.) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding only.
- (2.) Such landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the County Court a charge on the holding to the amount of the sum required to be paid or which has been paid, as the case may be, to the tenant.
- (3.) If such landlord neglect or fail within one month after the tenant has quitted his holding to pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled to obtain from the County Court in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all the costs properly incurred by him in obtaining the charge or in raising the amount due thereunder.
- (4.) The court shall on proof of the tenant's title to have a charge made in his favour make an order charging the holding with payment of the amount of the charge, including costs, in like manner and form as in case of a charge which a landlord is entitled to obtain.

Advance made  
by a company.

32. Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a County Court under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.

#### *Notice to Quit.*

Time of notice to  
quit.

33. Where a half-year's notice, expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the

landlord and tenant of the holding, by writing under their hands agree that this section shall not apply, in which case a half year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

*Fixtures.*

34. Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Tenant's property in fixtures, machinery, &c.

Provided as follows:—

1. Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding :
2. In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding :
3. Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal :
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it :
5. At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

*Crown and Duchy Lands.*

35. As to application of Act to Crown lands.
36. As to application of Act to land of Duchy of Lancaster.
37. As to application of Act to land of Duchy of Cornwall.

*Ecclesiastical and Charity Lands.*

Landlord, arch-  
bishop or bishop.

38. Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord shall not be exercised by the archbishop or bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners for England.

Landlord,  
incumbent of  
benefice.

39. Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person, officer, or authority who, in case the benefice were vacant, would be entitled to present thereto, or of the governors of Queen Anne's Bounty (that is, the governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).

In every such case the governors of Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the County Court a charge on the holding, in respect thereof, in favour of themselves.

Every such charge shall be effectual, notwithstanding any change of the incumbent.

Landlord,  
charity trustees,  
&c.

40. The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners for England and Wales.

*Resumption for Improvements, and Miscellaneous.*

Resumption of  
possession for  
cottages, &c.

41. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes:

The erection of farm labourers' cottages or other houses, with or without gardens;

The providing of gardens for existing farm labourers' cottages or other houses;

The allotment for labourers of land for gardens or other purposes;

The planting of trees;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;

The obtaining of brick earth, gravel, or sand;

The making of a watercourse or reservoir;

The making of any road, railway, tramroad, siding, canal,

or basin, or any wharf, pier, or other work connected therewith ;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy, and the notice to quit shall have effect accordingly.

42. Subject to the provisions of this Act in relation to Crown, duchy, ecclesiastical, and charity lands, a landlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were in the case of an estate of inheritance owner thereof in fee, and in the case of a leasehold possessed of the whole estate in the leasehold. Provision as to limited owners.

43. When, by any Act of Parliament, deed, or other instrument, a lease of a holding is authorised to be made, provided that the best rent, or reservation in the nature of rent, is by such lease reserved, then, whenever any lease of a holding is, under such authority, made to the tenant of the same, it shall not be necessary, in estimating such rent or reservation, to take into account against the tenant the increase (if any) in the value of such holding arising from any improvements made or paid for by him on such holding. Provision in case of reservation of rent.

## PART II.—*Distress.*

44. After the commencement of this Act it shall not be lawful for any landlord entitled to the rent of any holding to which this Act applies to distrain for rent, which became due in respect of such holding, more than one year before the making of such distress, except in the case of arrears of rent in respect Limitation of distress in respect of amount and time.

of a holding to which this Act applies existing at the time of the passing of this Act, which arrears shall be recoverable by distress up to the first day of January one thousand eight hundred and eighty-five to the same extent as if this Act had not passed.

Provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then for the purpose of this section the rent of such holding shall be deemed to have become due at the expiration of such quarter or half year as aforesaid, as the case may be, and not at the date at which it legally became due.

Limitation of distress in respect of things to be distrained.

45. Where live stock belonging to another person has been taken in by the tenant of a holding to which this Act applies to be fed at a fair price agreed to be paid for such feeding by the owner of such stock to the tenant, such stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being found, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or if any part of such price has been paid exceeding the amount remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying to the distrainer a sum equal to such price as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding: Provided always, that so long as any portion of such live stock shall remain on the said holding the right to distrain such portion shall continue to the full extent of the price originally agreed to be paid for the feeding of the whole of such live stock, or if part of such price has been *bond fide* paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid.

Agricultural or other machinery which is the *bond fide* property of a person other than the tenant, and is on the premises of the tenant under a *bond fide* agreement with him for the hire or use thereof in the conduct of his business, and live stock of all kinds which is the *bond fide* property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrear.

Remedy for wrongful distress under this Act.

46. Where any dispute arises—

(a) In respect of any distress having been levied contrary to the provisions of this Act; or

- (b) As to the ownership of any live stock distrained, or as to the price to be paid for the feeding of such stock; or
- (c) as to any other matter or thing relating to a distress on a holding to which this Act applies :

such dispute may be heard and determined by the County Court or by a court of summary jurisdiction, and any such County Court or court of summary jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires; any such dispute as mentioned in this section shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of such court of summary jurisdiction under this section may, on giving such security to the other party as the court may think just, appeal to a court of general or quarter sessions.

47. Where the compensation due under this Act, or under any custom or contract, to a tenant has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord shall not be entitled to distrain for more than the balance. Set-off of compensation against rent.

48. An order of the County Court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by *certiorari* or otherwise into any Superior Court. Exclusion of *certiorari*.

49. No person whatsoever making any distress for rent on a holding to which this Act applies when the sum demanded, and due shall exceed the sum of twenty pounds for or in respect of such rent shall be entitled to any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed and set forth in the second schedule hereto. Limitation of costs in case in distress.

50. So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed as respects any holding to which this Act applies, and the landlord or other person levying a distress on such holding may sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold. The costs and expenses attending any such removal, and any damage to the goods and Repeal of 2 W. & M. c. 5, s. 1, as to appraisement and sale at public auction.



chattels arising therefrom, shall be borne and paid by the party requesting the removal.

Extension of  
time to replevy at  
request of tenant.

51. The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same shall, in the case of any distress on a holding to which this Act applies, be extended to a period of not more than fifteen days, if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional costs that may be occasioned by such extension of time. Provided that the landlord or person levying the distress may, at the written request or with the written consent of the tenant, or such owner as aforesaid, sell the goods and chattels distrained or part of them at any time before the expiration of such extended period as aforesaid.

Bailiffs to be  
appointed by  
County Court  
judges.

52. From and after the commencement of this Act no person shall act as a bailiff to levy any distress on any holding to which this Act applies unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of the judge of a County Court; and every County Court judge shall, on or before the thirty-first day of December one thousand eight hundred and eighty-three, and afterwards from time to time as occasion shall require, appoint a competent number of fit and proper persons to act as such bailiffs as aforesaid. If any person so appointed shall be proved to the satisfaction of the said judge to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his appointment summarily cancelled by the said judge.

### PART III.—*General Provisions.*

Commencement  
of Act.

53. This Act shall come into force on the first day of January one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Holdings to  
which Act  
applies.

54. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

Avoidance of  
agreement  
inconsistent with  
Act.

55. Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the first schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity.



56. Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

Right of tenant in respect of improvement purchased from out-going tenant.

57. A tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorised by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act, but where he is not entitled to compensation under or in pursuance of this Act he may recover compensation under any other Act of Parliament, or any agreement or custom, in the same manner as if this Act had not passed.

Compensation under this Act to be exclusive.

58. A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

Provision as to change of tenancy.

59. Subject as in this section mentioned, a tenant shall not be entitled to compensation in respect of any improvements, other than manures as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

Restriction in respect of improvements by tenant about to quit.

A final notice to quit means a notice to quit which has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

- (1.) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, has quitted his holding at the expiration of that year; and
- (2.) Where a tenant, whether a tenant from year to year or a lessee, previously to beginning any such improvement, has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

General saving  
of rights.

60. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

Interpretation.

61. In this Act—

“Contract of tenancy” means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year :

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act :

“Determination of tenancy” means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause :

“Landlord” in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding :

“Tenant” means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year :

“Tenant” includes the executors, administrators, assigns, legatee, devisee, or next of kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant ; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid :

“Holding” means any parcel of land held by a tenant :

“County Court,” in relation to a holding, means the County Court within the district whereof the holding or the larger part thereof is situate :

“Person” includes a body of persons and a corporation aggregate or sole :

“Live stock” includes any animal capable of being distrained :

“Manures” means any of the improvements numbered twenty-two and twenty-three in the third part of the first schedule hereto :

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

62. On and after the commencement of this Act, the Agricultural Holdings (England) Act, 1875, and the Agricultural Holdings (England) Act, 1875, Amendment Act, 1876, shall be repealed. Repeal of Acts of 1875 and 1876

Provided that such repeal shall not affect—

- (a.) any thing duly done or suffered, or any proceedings pending under or in pursuance of any enactment hereby repealed; or
- (b.) any right to compensation in respect of improvements to which the Agricultural Holdings (England) Act, 1875, applies, and which were executed before the commencement of this Act; or
- (c.) any right to compensation in respect of any improvement to which the Agricultural Holdings (England) Act, 1875, applies, although executed by a tenant after the commencement of this Act, if made under a contract of tenancy current at the commencement of this Act; or
- (d.) any right in respect of fixtures affixed to a holding before the commencement of this Act;

and any right reserved by this section may be enforced after the commencement of this Act in the same manner in all respects as if no such repeal had taken place.

#### FIRST SCHEDULE.

##### PART I.—*Improvements to which consent of Landlord is required.*

- (1.) Erection or enlargement of buildings.
- (2.) Formation of silos.
- (3.) Laying down of permanent pasture.
- (4.) Making and planting of osier beds.
- (5.) Making of water meadows or works of irrigation.
- (6.) Making of gardens.
- (7.) Making or improving of roads or bridges.
- (8.) Making or improving of watercourses, ponds, wells, or reservoirs, or works for the application of water power or for supply of water for agricultural or domestic purposes.
- (9.) Making of fences.
- (10.) Planting of hops.
- (11.) Planting of orchards or fruit bushes.

- (12.) Reclaiming of waste land.
- (13.) Warping of land.
- (14.) Embankment and sluices against floods.

**PART II.—Improvements in respect of which notice to Landlord is required.**

- (15.) Drainage.

**PART III.—Improvements to which consent of Landlord is not required.**

- (16.) Boning of land with undissolved bones.
- (17.) Chalking of land.
- (18.) Clay-burning.
- (19.) Claying of land.
- (20.) Liming of land.
- (21.) Marling of land.
- (22.) Application to land of purchased artificial or other purchased manure.
- (23.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

**SECOND SCHEDULE.**

Sect. 49.

Levying distress. Three per centum on any sum exceeding 20*l.* and not exceeding 50*l.* Two and a half per centum on any sum exceeding 50*l.* To bailiff for levy, 1*l.* 1*s.*

To man in possession, if boarded, 8*s.* 6*d.* per day ; if not boarded, 5*s.* per day.

For advertisements the sum actually paid.

To auctioneer. For sale five pounds per centum on the sum realised not exceeding 100*l.*, and four per centum on any additional sum realised not exceeding 100*l.*, and on any sum exceeding 200*l.* three per centum. A fraction of 1*l.* to be in all cases considered 1*l.*

Reasonable costs and charges where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress ; such costs and charges in case the parties differ to be taxed by the registrar of the County Court of the district in which the distress is made.

**LEASES.(a)**

*An Act for Granting Relief against Defects in Leases made under Powers of Leasing in certain cases.*

12 & 13 VICT. c. 26.

Where leases under power invalid.

2. Leases which are invalid owing to a deviation from the terms of a power of leasing are to be deemed contracts in equity for such leases as might have been granted under the power, save so far as any variation may be necessary in order to comply with the terms of the power.

4. Where a lease, granted in the intended exercise of a power of leasing, is invalid by reason that at the time of granting

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(a) As to leases by mortgagees and mortgagors, see 44 & 45, c. 41, s. 18, *post*, title "Mortgages." As to leases by tenants for life, see 40 & 41 Vict. c. 18, s. 46, and 45 & 46 Vict. c. 38, *post*, title "Settled Estates."

thereof the person granting the same could not lawfully grant such lease, but the estate of such person in the hereditaments comprised in such lease shall have continued after the time when such or the like lease might have been granted by him in the lawful exercise of such power, then such lease shall take effect, and be as valid as if granted at such last-mentioned time.

5. When a valid power of leasing is vested in or may be exercised by a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person or otherwise) cannot have effect and continuance according to the terms thereof independently of such power, such lease shall, for the purposes of this Act, be deemed to be granted in the intended exercise of such power, although such power be not referred to in such lease. What deemed an intended exercise of power

6. Nothing herein shall extend or be construed to prejudice or take away any right of action or other right or remedy to which, but for the passing of this Act, the lessee named in any such lease as aforesaid, his heirs, executors, administrators, or assigns, would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease, on the part of the person granting the same, or to prejudice or take away any right of re-entry or other right or remedy to which, but for the passing of this Act, the person granting such lease, his heirs, executors, administrators, or assigns, or other the person for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for or by reason of any breach of the covenants, &c., contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns, to be observed and performed. Saving of certain rights.

7. The Act is not to extend to ecclesiastical, collegiate, or charitable foundation leases. Exemption from Act.

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*An Act to amend the 12 & 13 Vict. c. 26.*

13 VICT. c. 17.

2. Where, upon or before the acceptance of rent under any such invalid lease as is mentioned in the 12 & 13 Vict. c. 26, any receipt, memorandum, or note in writing confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorised, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. Confirmation of invalid lease.

3. Where, during the continuance of the possession taken under any such invalid lease, the person for the time being entitled (subject to such possession as aforesaid) to the hereditaments, shall be able and willing to confirm, lessee to accept confirmation. Where reversioner able and willing to confirm, lessee to accept confirmation.

ments comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his heirs, executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming and accepting respectively, or by some other persons by them respectively thereunto lawfully authorised. After confirmation and acceptance of confirmation, such lease shall be valid, and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid.

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*An Act to further Amend the Law of Property and to relieve Trustees.*

22 & 23 VICT. c. 35. (a)

*Leases.*

Effect of licence to commit breach of covenant, &c.

1. Where any licence to do any act which, without such licence, would create a forfeiture or give a right to re-enter under a condition or power reserved in a lease shall hereafter be given to any lessee or his assigns such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the assignment, underlease, or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence), and all rights under covenants and powers of forfeiture and re-entry in the lease shall remain in force and be available against any subsequent breach of covenants, &c., as if no such licence had been given; and the condition of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorised to be done. (b)

Licence as to part of property.

2. Where a lease contains a condition of re-entry on assigning, underletting, or doing any other specified act without licence, and a licence shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any such act as afore-

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(a) For other sections of this Act, see titles "Inheritance" and "Real Property (Miscellaneous Acts)."

(b) See *Dunpor's case* and notes thereon: (Student's Leading Cases, p. 100.)

said in respect of part only of such property, such licence shall not destroy the right of re-entry in case of breach of the covenant or condition by the co-lessees or owners of other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) in respect of such shares or interests or remaining property.

3. Where the reversion upon a lease is severed and the rent is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent allotted or belonging to him, have the benefit of all conditions of re-entry for non-payment of the original rent as if the same had been reserved to him as incident to his part of the reversion in respect of the apportioned rent allotted or belonging to him.

Apportionment  
of conditions of  
re-entry.

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*An Act to further amend the Law of Property.*

23 & 24 VICT. c. 38. (a)

6. Where an actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns, shall be proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate, unless a contrary intention shall appear.

Effect of waiver  
of breach of  
covenant.

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*The Conveyancing Act, 1881.*

44 & 45 VICT. c. 41. (b)

III.—LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

Rent and benefit  
of lessee's cove-  
nants to run with  
reversion.

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(a) For other sections of this Act, see titles "Judgments" and "Real Property (Miscellaneous Acts)."

(b) And see sect. 67, *post*, title "Real Property (Miscellaneous Acts)."

(2.) This section applies only to leases made after the commencement of this Act.

Obligation of  
lessor's cove-  
nants to run with  
reversion.

11.—(1.) The obligation of a covenant entered in to by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Apportionment  
of conditions on  
severance, &c.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or ceaser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

On sub-demise,  
title to leasehold  
reversion not to  
be required.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

### *Forfeiture.*

Restrictions on  
and relief against  
forfeiture of  
leases.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition



in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, think fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative underlease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it would subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

- (i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or

other things, or to enter or inspect the mine or the working thereof.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

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*The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39.

Contract for  
lease not part of  
title to lease.

4.—(1) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

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LEGACY DUTY.

*An Act for repealing the Stamp Duties on . . . . Legacies . . . ; and for granting other duties in lieu thereof.*

55 GEO. 3, c. 184.

*Schedule of Legacy Duties.*

*(Where the testator, testatrix, or intestate shall have died after 5th April, 1805.)*

Applicable to legacies of any description, and clear residues.

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved, to or for the benefit of—

A child of the deceased, or any descendant of a child of the deceased, or to or for the benefit of the father or mother, or any lineal ancestor of the deceased; a duty at the rate of [0 (a)] per cent. on the amount or value thereof.

A brother or sister of the deceased, or any descendant of a brother or sister of the deceased; a duty at and after the rate of 3*l.* per cent. on the amount or value thereof.

A brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased; a duty at and after the rate of 5*l.* per cent. on the amount or value thereof.

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(a) See 44 Vict. c. 12, s. 42, *post*, Part. II., title "Probate Acts."

A brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased: a duty at and after the rate of 6l. per cent. on the amount or value thereof.

Any person in any other degree of collateral consanguinity to the deceased, or to or for the benefit of any stranger in blood to the deceased; a duty at and after the rate of 10l. per cent. on the amount or value thereof.

And all gifts of annuities, or by way of annuity (a) or of any other partial benefit or interest, out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

### *Exemptions.*

Legacies and residues, or shares of residue given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the Royal family.

And all legacies which were exempted from duty by 39 Geo. 3, c. 73, for exempting certain specific legacies given to bodies corporate, or other public bodies, from the payment of duty.

## LIBEL.

### *An Act to Amend the Law respecting defamatory Words and Libel.*

6 & 7 VICT. c. 96.

1. In any action for defamation the defendant may (after notice in writing to be given to the plaintiff on filing or delivering plea) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before action, or as soon after as he had an opportunity in case the action shall have been commenced before there was an opportunity to do so. Evidence may be given of apology.

2. In an action for a libel in a newspaper or periodical, the defendant may plead that it was inserted without actual malice and without gross negligence, and that before action, or at the earliest opportunity (b) after, he inserted in such newspaper or periodical a full apology, or if such newspaper or periodical Action for libel in newspaper, &c.

(a) The value of annuities is calculated in manner provided by the Succession Duty Act (16 & 17 Vict. c. 51).

(b) A libel appeared on the 6th Jan. The attention of the defendant was called to it on the 13th, action was commenced on the 21st, and on the 6th Feb. an apology was published. Held, that the apology had not been published at the "earliest opportunity:" (*Ravenhill v. Upcott*, 9 Bar. Rep. 233.)

should be published at intervals exceeding one week had offered to publish such apology in any newspaper or periodical to be selected by the plaintiff,

Other sections relate to the punishment of publishers of libels, and proceedings on prosecution for defamatory libels, &c.

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*An Act to Amend the 6 & 7 Vict. c. 96.*

8 & 9 VICT. c. 75.

Payment into  
court.

2. If such plea as mentioned in the 6 & 7 Vict. c. 96, sect. 2, be filed without payment of money into court by way of amends, the plaintiff may treat it as a nullity.

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*Newspaper Libel and Registration Act, 1881.*

44 & 45 VICT. c. 60. (a)

Newspaper  
reports of certain  
meetings  
privileged.

1. Interpretation of the terms used in the Act.

2. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of such plaintiff or prosecutor.

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LIFE ASSURANCE.

*An Act for regulating Insurances upon Lives, and for prohibiting all such Insurances, except in cases where the Persons Insuring shall have an Interest in the Life or Death of the Persons Insured.*

14 GEO. 3, c. 48. (b)

No insurance to  
be made unless  
insurable  
interest exists.

1. No insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the

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(a) For other sections of this Act, see *post*, Part IV.

(b) See *Dalby v. The India and London Life Assurance Company* and notes ("Student's Leading Cases," p. 101).

person or persons for whose use, benefit, or on whose account such policy or policies shall be made shall have no interest, or by way of gaming or wagering, and every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever.

2. It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons' name or names interested therein, or for whose use, benefit, or on whose account such policy is so made or underwrote. Names to be inserted in policies.

3. In all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers, than the amount or value of the interest of the insured in such life or lives or other event or events. Amount recoverable.

4. Provided always, that nothing herein contained shall extend to insurances *bond fide* made on ships, goods, or merchandises. Saving.

### *The Policies of Assurance Act, 1867.*

30 & 31 VICT. c. 144.

1. Any person or corporation entitled by assignment or other derivative title to a policy of life assurance, and possessing at the time of action brought the right in equity to receive and give an effectual discharge for the moneys thereby assured, may sue at law in the name of such person or corporation to recover such moneys. Assignees may sue in their own names.

2. In any action on such policy a defence on equitable grounds or reply to such defence may be respectively pleaded and relied upon as in any other personal action. Equitable defence.

3. No such assignment shall confer on the assignee the right to sue for the moneys assured thereby until notice of the date and purport of the assignment shall have been given to the assurance company; and the date on which notice shall be received shall regulate the priority of claims. Payment *bond fide* made by the company before notice shall be valid against the assignee. Notice.

5. The assignment may be indorsed on the policy, or may be by a separate instrument in the words or to the effect set forth in the schedule hereto, such indorsement or separate instrument being duly stamped. Assignment.

6. The insurance company shall upon request, and upon payment of a fee not exceeding 5s., deliver an acknowledgent of the receipt of the notice which shall be evidence thereof. Fee.

8. This Act shall not apply to any policy granted or to be granted, or to any contract for a payment on death entered into Non-application of Act.

or to be entered into in pursuance of the 16 & 17 Vict. c. 45, and the 27 & 28 Vict. c. 43, or either of those Acts, or to any engagement for payment on death by any friendly society.

#### SCHEDULE.

I, *A.B.* of, &c., in consideration of, &c., do hereby assign unto *C.D.* of, &c., his executors, administrators, and assigns, the [within] policy of assurance granted, &c., [*Here describe the policy*]. In witness, &c.

### *The Married Women's Property Act, 1882.*

45 & 46 VICT. c. 75.

Moneys payable under policy of assurance not to form part of estate of the insured—18 & 14 Vict. c. 60.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equivalent to the premiums so paid.

The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same.

The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the

insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

## LIMITATION OF ACTIONS (REAL PROPERTY).

*An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto.*

3 & 4 WILL. 4, c. 27.

3. In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent (a) shall be deemed to have first accrued at such time as follows, When right to recover land or rent is deemed to have accrued.  
viz :—

When the claimant, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession, or in receipt of the profits or rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.

When the claimant shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt, in respect of the same estate or interest, until his death, and shall have been the last person entitled to the same who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death.

When the claimant shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will), to him, or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits or rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the claimant or person through whom he claims became entitled to such possession or receipt, by virtue of such instrument.

When the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained possession or receipt

(a) As to the meaning of the word "rent" in the different sections of this Act, see 4 Chitty's Statutes, 4th ed. 107, 108.

of the profits or rent of such land in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

When the claimant, or the person through whom he claims, shall have become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition, was broken ; but—

Reversioner or  
remainderman.

4. When advantage of any forfeiture or breach of condition is not taken by a reversioner or remainderman, his right to make an entry or distress, or bring an action to recover the land or rent, shall be deemed to have first accrued when his estate comes into possession.

Administrator.

6. An administrator shall be deemed to claim as if there had been no interval of time between the death and the grant.

Tenancy at will.

7. When any person shall be in possession or receipt of the profits or rent of any land as tenant at will, the right of the person entitled, subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued, either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. *Proviso* : No mortgagor or *cestui qui trust* shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee.

Tenancy for  
years without  
lease in writing.

8. When any person shall be in possession or in receipt of the profits or rent of any land as tenant from year to year or other period, without any lease in writing, the right of the person entitled, subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

Lease in writing.

9. When any person shall be in possession or receipt of the profits of any land or the receipt of any rent by virtue of a lease in writing, by which an annual rent of 20s. or upwards shall be reserved, and shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of such rent shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled, subject to such lease, or of the person through whom he claims, to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have



first accrued at the time at which the rent was first so wrongfully received.

10. No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon. Mere entry not possession.

11. No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. Continual claim.

12. When any one or more of several persons entitled to any land or rent as co-parceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or profits or rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons, or any of them. Joint owners.

13. When a younger brother, or other relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, the same shall not be deemed to be the possession or receipt of or by the person entitled as heir. Younger brother.

14. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him, or his agent, in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom, or to whose agent, such acknowledgment shall have been given, at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at, and not before, the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given, (a) Acknowledgment in writing.

18. When any person shall be under disability at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, and shall die without having ceased to be under such disability, no time to make an entry, &c., beyond the period of [12(b)] years Disability.

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(a) Where a title to land has been acquired by adverse possession for the statutory period, an acknowledgment given after such period has expired to the former owner is not sufficient to take the case out of the statute: (*Sanders v. Sanders*, 45 L. T. 687.)

(b) See 37 & 38 Vict. c. 57, *infra*.

next after the right of such person to make an entry, &c., shall have first accrued, or the period of [6 (a)] years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

Future estates.

20. When the right to an estate in possession is barred, the right of the same person to future estates in or to the same land or rent shall also be barred.

Entailed lands.

21. When the right of a tenant in tail is barred, no such entry, &c., shall be made, &c., by any person whom such tenant in tail might have barred.

22. When a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period which shall be applicable in such case for making an entry, &c., no person whom he might have barred shall make an entry, &c., but within the period during which, if such tenant in tail had so long lived, he might have made such entry, &c.

Suit in equity.

24. No suit in equity to recover land or rent shall be brought after the time when the plaintiff, if entitled at law, might have brought an action.

Express trust.

25. When any land or rent shall be vested in a trustee, upon any express trust, the right of the *cestui qui trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at, and not before, the time [at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him.

Fraud.

26. In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before, the time at which such fraud shall, or with reasonable diligence might have been, first known or discovered. *Proviso*: Nothing in this clause shall enable any owner of land or rents, to have a suit in equity for the recovery thereof, or for setting aside any conveyance thereof on account of fraud, against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

Acquiescence.

27. Nothing in this Act shall be deemed to interfere with

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(a) See 37 & 38 Vict. c. 57, *infra*.

any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

29. No land or rents shall be recovered by any ecclesiastical or eleemosynary corporations sole, but within two incumbencies and six years, or if such periods do not together amount to sixty years, then within such further number of years as will, in addition, make up sixty years. Ecclesiastical lands.

30. No advowson shall be recovered but within three incumbencies, or if they do not together amount to sixty years, then within such further number of years as will, in addition, make up sixty years. Advowsons.

31. Incumbencies after a lapse shall be reckoned within such period as aforesaid, but not incumbencies after promotion to bishoprics.

32. Every person claiming a right to present to, or bestow any ecclesiastical benefice as patron thereof, by virtue of any estate, interest, or right, which the owner of an estate tail in the advowson might have barred, shall be deemed to be a person claiming through the person entitled to such estate tail, and the right to bring any *quare impedit* action, or suit, shall be limited accordingly.

33. No advowson shall be recovered after one hundred years adverse possession, unless a clerk shall subsequently have obtained possession on the presentation or gift of the person claiming, or some person through whom he claims, or some other person entitled in respect of an estate, share or right, held or derived under the same title.

34. At the determination of the respective limited periods as aforesaid, the right of the party out of possession shall be extinguished. Extinguishment of right.

39. No descent or discontinuance which may happen after the 31st of December, 1838, shall defeat any right of entry or action for the recovery of land. No descent to bar right of entry.

41. Only six years arrears of dower shall be recoverable. Dower.

42. No arrears of rent or of interest in respect of any sum charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit, but within six years (a) next after the same respectively shall have become due, or next after an acknowledgment of the same in Rent.  
Interest.

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(a) But if the rent has been reserved by deed *twenty* years arrears may be recovered by bringing an action on the covenant to pay, unless, indeed, the decision in *Sutton v. Sutton* (see *post*, p. 188), should be held to apply to this case.

writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. *Proviso:* Where any prior mortgagee, or other incumbrancer, shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage, &c., may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, although such time may have exceeded six years.

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*An Act to Amend the 3 & 4 Will. 4, c. 27.*

7 WILL. 4 & 1 VICT. c. 28.

Actions by mortgagees to recover land.

By this Act, any person entitled to, or claiming under, any mortgage of land, being land as defined by the 3 & 4 Will. 4, c. 27, s. 1, may make an entry, or bring an action, to recover such land at any time within [12 (a)] years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than [12 (a)] years may have elapsed since the time at which the right to make such entry, or bring such action or suit, shall have first accrued (b).

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*An Act for the further Limitation of Actions and Suits relating to Real Property.*

37 & 38 VICT. c. 57.

Limitation of actions for land or rent.

1. After the commencement of this Act no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action

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(a) See 37 & 38 Vict. c. 57, *infra*.

(b) A payment without the authority of the mortgagor of rent by a tenant of part of the land in mortgage on demand to the mortgagee is not a "payment of any part of the principal money or interest secured by such mortgage," which will keep alive the mortgagee's right to bring an action of foreclosure in respect of the whole property, although it operates to put the mortgagee in possession of the part of the property in respect of which the rent is paid. "Payment," to take a case out of the Statute of Limitations," must be by way of acknowledgment, and it will not be sufficient within this Act unless it is made by a person liable, or his agent, or a person bound to make payment on his account. An action of foreclosure is an action for the recovery of land: (*Harlock v. Ashberry*, 19 Ch. Div. 589; 51 L. J. 394, Ch.)

or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twelve years after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making, or bringing the same (a).

2. A right to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent: Future estates.

But if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within twelve years next after the time when the right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those two periods shall be the longer; and if the right of any such person to make such entry or distress, or to bring any such action or suit, shall have been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest

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(a) The statute ceases to run against a mortgagee out of possession when he commences an action for foreclosure, and therefore a mortgagee who within twelve years has sued for and obtained an order for foreclosure can recover the land, although no payment of interest or on account of principal has been made to him by the mortgagor within twelve years: (*Heath v. Pugh*, 44 L. T. 327; 6 C. P. Div. 345; 50 L. J. 473, C. P.)

shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit to recover such land or rent.

Disability.

3. If at the time at which the right of any person to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, viz., infancy, coverture (*a*), idiotcy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twelve years or six years (as the case may be) hereinbefore limited shall have expired, make an entry or distress, or bring an action or suit, to recover such land or rent at any time within six years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under any such disability, or shall have died (whichever of those two events shall have first happened. (*b*))

Absence beyond seas.

4. The time within which any such entry may be made or any such action or suit may be brought as aforesaid shall not in any case after the commencement of this Act be extended or enlarged by reason of the absence beyond seas during all or any part of that time of the person having the right to make such entry or to bring such action or suit, or of any person through whom he claims.

No action to be brought after thirty years.

5. No entry, distress, action, or suit shall be made or brought by any person who at the time at which his right to make any entry, or distress, or to bring an action or suit to recover any land or rent, shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

Entailed lands.

6. In case of possession under an assurance by a tenant in tail, which shall not bar the remainders, they shall be barred at the end of twelve years after that period at which the assurance if then executed would have barred them.

When mortgagor barred.

7. When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent

(*a*) See 45 & 46 Vict. c. 75, ss. 1 (2) and 12, *post*, title "Married Women."

(*b*) This section does not apply to extend the time for bringing actions for redemption against a mortgagee in possession, which is governed exclusively by sect. 7: (*Forster v. Patterson*, 44 L. T. 465; 17 Ch. Div. 182; 50 L. J. 60, Ch.)

comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage, but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such action or suit shall be brought, but within twelve years next after the time at which such acknowledgment or the last of such, if more than one, was given.

When there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land, or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land, or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Where more than one mortgagor.

8. No action, suit, or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal

Money charged on land, and legacies.



money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable or his agent, to the person entitled thereto or his agent; and in such case no such action, suit, or proceeding shall be brought, but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given. (a)

Sums charged on land and secured by express trusts.

10. After the commencement of this Act, no action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

12. This Act shall commence and come into operation on the 1st of January, 1879.

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## LIMITATION OF ACTIONS (MISCELLANEOUS ACTS).(b)

*An Act for Limitation of Actions and for avoiding of Suits in Law.*

21 JAC. 1, c. 16.

Limitation of certain personal actions.

3. All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, all actions of account, and upon the case (c) (except slander), all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrears of rent shall be commenced within six years; all actions of assault, battery, wounding, or imprisonment, within

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(a) An action on a covenant to pay principal and interest in a deed of mortgage of land is within this section (*Sutton v. Sutton*, 48 L. T. 95); and a sum secured by a mortgage on land, and a like sum secured by a bond of even date as a collateral security, are treated as one and the same sum, so that where the right of action in respect of the land is gone, the right of action upon the bond is gone also: (*Fearnside v. Flint*, 48 L. T. 154.)

(b) Where the time expires on a Sunday, it is too late to bring an action the next day: (*Morris v. Richards*, 45 L. T. 210.)

(c) *Assumpsit* is an action upon the case: (*Battley v. Faulkner*, 3 B. & Ald. 294.)



four years, and slander (a) within two years next after the cause thereof respectively.

7. Provided that if any person that shall be entitled to any Disability. such action shall be at the time of the cause thereof an infant, *feme covert* (b) or *non compos mentis*, such actions may be brought after such disability within such times as are before limited.

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*An Act for the Amendment of the Law and the better Advancement of Justice.*

4 & 5 ANNE, c. 16. (c)

19. Actions against persons beyond the seas may be brought after their return within such times as are limited by the Action against person beyond seas. 21 Jac. 1, c. 16.

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*An Act for the better Regulation of Ecclesiastical Courts in England, and for the more easy Recovery of Church Rates and Tithes.*

58 GEO. 3, c. 127.

By this Act actions for tithes must be brought within six years Tithes. from the time when the tithes became due.

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*An Act for rendering a Written Memorandum necessary to the Validity of certain Promises and Engagements.*

9 GEO. 4, c. 14. (d)

(*Lord Tenterden's Act.*)

1. In actions of debt, or upon the case, grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the 21 Jac. 1, c. 16, or to deprive any party of the benefit thereof, unless such acknow- Acknowledgment to take case out of Statute of Limitations.

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(a) This limitation does not extend to an action for libel or written slander, nor to slander of title, which is limited to six years (*Law v. Harwood*, Cro. Car. 141), nor to an action for words actionable only in respect of special damage : (*Saunders v. Edwards*, 1 Sid. 95.)

(b) See 45 & 46 Vict. c. 75, ss. 1 (2) and 12, *post*, title "Married Women."

(c) In the Revised Statutes this Act appears as c. 8. It may be here remarked that it is to be feared that the alterations of the numbers of the chapters of several well-known Acts by the editors of the Revised Statutes will cause the student who has stored his memory with the old references a certain amount of confusion, and, consequently, of annoyance.

(d) For other sections of this Act, see title "Frauds, &c.," *ante*, p. 120.

Joint  
contractors.

ledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby. (a) Where there shall be two or more joint contractors, or executors, or administrator of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them. *Proviso*: Nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person. *Proviso*: In actions against two or more such joint contractors, or executors, or administrators, if it shall appear at the trial or otherwise, that the plaintiff though barred by the said Act or this Act as to one or more of such joint contractors, &c., shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

Indorsements of  
payments.

3. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the said Act.

Set-off.

4. The said Act and this Act shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant.

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*An Act for the further Amendment of the Law, and the better Administration of Justice.*

3 & 4 WILL. 4, c. 42. (b)

Actions of debt  
on specialties.

3. All actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or *scire facias* upon any recognisance, and also all actions of debt upon any award where the submission is

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(a) If a written promise to pay a statute-barred debt has been lost, parol evidence may be given of the contents of the writing: (*Haydon v. Williams*, 7 Bing. 168.) There must be one of these three things to take the case out of the statute: 1. An acknowledgment of the debt, from which a promise to pay is to be implied. 2. An unconditional promise to pay the debt. 3. A conditional promise to pay the debt, and evidence that the condition has been performed: (Mellish, L.J., in *Re River Steamer Company*, 6 Ch. 828.) The acknowledgment must be given before action: (*Bateman v. Pinder*, 3 Q.B. 574.)

(b) For other sections of this Act, see titles "Interest" and "Trustees, Executors, and Administrators."

not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any *fiери facias*, and all actions for penalties, damages, or sums of money given to the party grieved, by any statute now or hereafter to be in force, shall be commenced within the time hereafter limited, viz., actions of debt for rent upon an indenture of demise, or covenant, or debt upon any bond or other specialty, actions of debt or *scire facias* upon recognisance, within twenty years after the cause thereof; the said actions by the party grieved, within two years after the cause thereof; and the said other actions within six years after the cause thereof. *Proviso*: Nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

4. In case of disability, such actions may be brought within such times after the disability shall have ceased as other persons, having no such impediment, should, according to the provisions of this Act, have brought the same. Disability.

5. If any acknowledgment shall have been made either by writing signed by the party liable by virtue of such indenture, specialty, or recognisance, or his agent, or by part payment, or part satisfaction on account of any principal or interest being due thereon, action may be brought for the money remaining unpaid, and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment, or part satisfaction; or in case the person entitled to such action shall at the time of such acknowledgment be under disability, or the party making the acknowledgment shall be at the time thereof beyond the seas, then within twenty years after such disability shall have ceased, or the party shall have returned from beyond the seas as the case may be. Acknowledgment, or part payment.

*An Act to protect Justices of the Peace from Vexatious Actions for Acts done by them in Execution of their Office.*

11 & 12 VICT. c. 44.

8. No action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed.

*The Mercantile Law Amendment Act, 1856.*

19 & 20 VICT. c. 97. (a)

9. All actions of account or for not accounting and suits for Limitation of actions for merchants' accounts.

(a) For other sections of this Act, see title "Mercantile Law Amendment."

such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced within six years after the cause thereof; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit, shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit,

Absence beyond seas or imprisonment of a person entitled to action no disability.

10. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by the following Acts: 21 Jac. 1, c. 16, s. 3; 4 Anne, c. 16, s. 17; 53 Geo. 3, c. 127, s. 5; 3 & 4 Will. 4, c. 27, ss. 40, 41, 42; 3 & 4 Will. 4, c. 42, s. 3; 16 & 17 Vict. c. 113, s. 20; shall be entitled to any time within which to commence the same beyond the period so fixed for the same by the said enactments by reason only of such person, or some one or more of such persons being at the time of such cause of action or suit accrued beyond the seas; or in the cases in which by virtue of any of the said enactments, imprisonment is now a disability, by reason of such person or some one or more of such persons being imprisoned at the time such cause of action or suit accrued.

Joint debtors.

11. Where such cause of action or suit with respect to which the period of limitation is fixed by the said enactments, or any of them, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued after his or their return by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid.

"Beyond seas."

12. None of the places mentioned in sect. 7 shall be deemed to be beyond seas within the meaning of the 4 & 5 Anne, c. 16, or this Act.

Acknowledgment by agent.

13. In reference to the provisions of the Acts 9 Geo. 4, c. 14, s. 1 (a), and 16 & 17 Vict. c. 113, ss. 24 and 27, an acknowledgment or promise made or contained by or in writing signed by an agent of the party chargeable thereby duly authorised to

make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself.

14. In reference to the provisions of the Acts, 21 Jac. 1, c. 16, s. 3 (a); 3 & 4 Will. 4, c. 42, s. 3 (b); 16 & 17 Vict. c. 113, s. 20; when there shall be two or more co-contractors or co-debtors, whether bound or liable, jointly only or jointly and severally, or executors or administrators of any contractor, no such person shall lose the benefit of the said enactments, or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of them. (c)

Part payment by one co-debtor.

### *An Act to further Amend the Law of Property.*

23 & 24 Vict. c. 38. (d)

13. No proceeding shall be brought to recover the personal estate (or any share thereof) of an intestate, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for the same, unless in the meantime some part thereof or some interest in respect thereof shall have been accounted for or paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person accountable for the same or his agent to the person entitled thereto or his agent, and in such case no such proceeding shall be brought but within twenty years after such accounting, payment, or acknowledgment, or the last of such if more than one.

Personal estate of intestate.

### *An Act for the Constitution of a Supreme Court, and for other Purposes relating to the better Administration of Justice in England, &c.*

36 & 37 Vict. c. 66. (e)

25 (2.) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Claim of *cestui que trust*.

(a) See p. 188.

(b) See p. 190.

(c) One of two partners must be presumed, in the absence of proof to the contrary, to have authority to make a payment on account of a debt due by the firm, so as to take the debt out of the operation of the statute as against the other: (*Goodwin v. Parton and Page*, 41 L. T. 91, 568.)

(d) For other sections of this Act, see titles "Judgments," "Leases," and "Real Property (Miscellaneous Acts)."

(e) For other sections of this Act, see Part II.

## MARINE ASSURANCE.

*Policies of Marine Assurance Act, 1868.*

31 &amp; 32 VICT. c. 86.

By this Act assignees of marine policies may sue thereon in their own names, and policies of insurance may be assigned by indorsement in the words set forth in the schedule to the Act.

## MARRIED WOMEN.(a)

*An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance.*

3 &amp; 4 WILL. 4, c. 74.(b)

Dispositions by  
married women.

77. After the 31st of December, 1833, every married woman (except a tenant in tail, in which case provision is already hereby made) may, by deed, dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and also dispose of any estate which she alone, or she and her husband in her right, may have in any lands, or in any such money as aforesaid, including any power vested in or limited to her, as effectually as if she were a *feme sole*; but her husband must concur in the deed, which must be acknowledged as hereinafter directed. *Proviso*: This Act shall not extend to her legal estates in copyholds where any of the objects to be effected by this clause could heretofore have been effected by her in concurrence with her husband, by surrender.

79. Every deed to be executed by a married woman for any of the purposes of this Act, except as protector, for the sole purpose of consenting to the disposition of a tenant in tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed, before a judge of one of the Superior Courts at Westminster [or a judge of a County Court], or before a perpetual commissioner or a special commissioner. (c)

80. The judge or commissioners before receiving such acknowledgment shall examine the married woman apart from her husband, touching her knowledge of such deed, and shall

(a) And see sect. 61 of 45 & 46 Vict. c. 38, *post*, title "Settled Estates."

(b) For other sections of this Act, see *post*, title "Settled Estates."

(c) The acknowledgment is not to be impeachable by reason only that the person taking the same was interested in the transaction as a party, solicitor, or otherwise: (45 & 46 Vict. c. 39, s. 7 (3).)

ascertain whether she freely and voluntarily consents thereto, and if not, shall not permit her to acknowledge the same, and in such case such deed shall, so far as relates to the execution thereof, by such married woman, be void.

81. As to appointment of commissioners, &c.

82. A commissioner for a particular county may take acknowledgments elsewhere.

83. If by reason of residence beyond seas, ill health, or other sufficient cause, a married woman shall be prevented from making the acknowledgment in the ordinary way, the [Queen's Bench Division] or a judge thereof, may appoint a special commissioner to take the same.

84. The person or persons taking the acknowledgment shall sign a memorandum to be indorsed on, or written at the foot or in the margin of such deed, and also a certificate of the taking of such acknowledgment, to be written or engrossed on a separate piece of parchment, which, subject to alteration by the [Queen's Bench Division] shall be in the respective forms in this section set forth.

90. A married woman is to be separately examined in case of surrender of an equitable estate in copyholds, in the same manner as if such estate were legal.

91. If a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether so found by inquisition or not, or shall from any other cause, be incapable of executing a deed, or of making a surrender of copyholds, or if his residence shall not be known, or he shall be in prison, or living apart from his wife either by mutual consent or by sentence of divorce or from any other cause whatsoever, the [Queen's Bench Division] may, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said court shall seem meet, dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise, and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a *feme sole*, and shall, when done, &c., without prejudice to the rights of the husband as then existing independently of this Act, be as good and valid as if the husband had concurred.

*Proviso* : This clause shall not extend where the Lord Chancellor or other persons entrusted with the care of lunatics, or the [Chancery Division] shall be the protector of the settlement in lieu of the husband.

*An Act to enable Married Women to dispose of  
Reversionary Interests in Personal Estate.*

20 & 21 VICT. c. 57.

Dispositions by  
married women  
of reversionary  
interests in per-  
sonalty.

1. Every married woman may, by deed, dispose of every future or reversionary interest, whether vested or contingent, of such married woman or her husband in her right, in any personal estate whatsoever, to which she shall be entitled, under any instrument made after the 31st of December, 1857 (except such a settlement as after mentioned), and also release or extinguish any power which may be vested in or limited or reserved to her in regard to any such personal estate, as fully as she could do if she were a *feme sole*; and also release or extinguish her right or equity to a settlement out of any personal estate to which she or her husband in her right may be entitled in possession under any such instrument as aforesaid; except that no such disposition, &c., shall be valid, unless the husband concur in the deed by which the same shall be effected, nor unless acknowledged by her. *Proviso*: Nothing herein contained shall extend to any reversionary interest to which she shall become entitled by virtue of any deed, will, or instrument by which she shall be restrained from alienating or affecting the same.

Acknowledg-  
ment.

2. Every such deed to be executed in England or Wales by a married woman shall be acknowledged by her, and be otherwise perfected in the manner prescribed by the 3 & 4 Will. 4, c. 74, for the acknowledgment and perfecting of deeds disposing of interests of married women in land, and the clauses and provisions of the said Act shall extend and be applicable to such interest in personal estate, and to such powers as may be disposed of, &c., by virtue of this Act, as fully as if such interest or powers were interests in or powers over land.

Effect of Act on  
special powers.

3. The powers of disposition given to a married woman by this Act shall not interfere with any power which, independently of this Act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case except so far as by any disposition made by her under this Act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition.

Saving as to  
marriage settle-  
ments.

4. The powers of disposition hereby given to a married woman shall not enable her to dispose of any interest in personal estate settled upon her by any settlement, or agreement for a settlement, made on the occasion of her marriage.



*An Act to Amend the Married Women's Property Act, 1870.*

37 & 38 VICT. c. 50. (a)

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed, so far as respects marriages which shall take place after the passing of this Act (b), and a husband and wife married after the passing of this Act may be jointly sued for any such debt.

Who to be sued for wife's debts before marriage.

2. The husband shall in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage, or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively, to the extent only of the assets hereinafter specified; and, in addition to any other plea or pleas, may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded, the husband shall be deemed to have confessed his liability so far as assets are concerned.

Extent of husband's liability.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

Where husband without assets.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

Joint and separate judgment.

5. The assets in respect of and to the extent of which the husband shall in any such action be liable, are the value of—

Assets for which husband liable.

- (1.) The personal estate in possession of the wife, which shall have vested in the husband.
- (2.) The *choses in action* of the wife which the husband shall have reduced into possession, or which, with reasonable diligence, he might have so reduced.
- (3.) The chattels real of the wife which shall have vested in the husband and wife.
- (4.) The rents and profits of the real estate of the wife which

(a) As to the extent to which this Act has been repealed, see sect. 22 of 45 & 46 Vict. c. 75, *post*, p. 207.

(b) 30th July, 1874.

the husband shall have received, or with reasonable diligence might have received.

(5.) The husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person.

(6.) Any property, real or personal, which the wife, in contemplation of her marriage with the husband, shall, with his consent, have transferred to any person, with the view of defeating or delaying her existing creditors.

*Proviso*: When the husband, after marriage, pays any debt of his wife, or has a judgment *bond fide* recovered against him in any such action as in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

### *The Conveyancing Act, 1881.*

44 & 45 VICT. c. 41.(a)

#### VIII.—MARRIED WOMEN.

Power for court to bind interest of married woman.

39. (1.) Notwithstanding that a married woman is restrained from anticipation, the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

Power of attorney of married woman.

40. (1.) A married woman, whether an infant or not, shall, by virtue of this Act, have power as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this Act.

### *The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39.(b)

Acknowledgment of deeds.

7. (1.) Acknowledgments may be taken by one perpetual or special commissioner instead of two.

(a) For other sections of this Act, see *ante*, pp. 129 and 171, and *post*, titles "Mortgages," "Powers of Attorney," "Real Property (Miscellaneous Acts)," and "Trustees, Executors, and Administrators."

(b) For other sections of this Act see *ante*, p. 174, and *post*, titles "Mortgages," "Powers of Attorney," "Real Property (Miscellaneous Acts)," and "Trustees, Executors, and Administrators."

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(5.) The foregoing provisions of this section apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding anything in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

### *The Married Women's Property Act, 1882.*

45 & 46 VICT. c. 75.

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee.

Married woman to be capable of holding property and of contracting as a *feme sole*.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing (a) and being

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(a) The presentation by a married woman of a petition for the appointment of new trustees of a fund in which she is interested in reversion is "suing" within the meaning of this sub-section, and her husband need not be made a co-petitioner: (*Re G. Outwin's Trusts*, 48 L. T. 410.)

sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her (a); and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

Property of a woman married after the Act to be held by her as a *feme sole*.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Execution of general power.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed

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(a) The Act enables a married woman to bring an action in her own name without giving security for costs, and although the cause of action arose before the Act came into operation: (*Severance v. Civil Service Supply Association Limited*, 48 L. T. 485.)

liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interest of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to stock, &c., to which a married woman is entitled.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed,

As to stock, &c., to be transferred, &c., to a married woman.

unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint-stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company.

Investments in joint names of married women and others.

8. All the provisions hereinbefore contained as to deposits in any post-office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

As to stock, &c., standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or

public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

11. [See *ante*, p. 178.]

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Remedies of married woman for protection and security of separate property.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint-stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and

Wife's ante-nuptial debts and liabilities.



all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property ; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof : Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint-stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid ; but he shall not be liable for the same any further or otherwise ; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property : Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for antenuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them ; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him : and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall



be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

Act of wife  
liable to criminal  
proceedings.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the County Court of the district, or in Ireland to the chairman of the Civil Bill Court of the division in which either party resides, and the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit:

Questions be-  
tween husband  
and wife as to  
property to be  
decided in a  
summary way.

Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a County or Civil Bill Court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a County Court or Civil Bill Court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the County Court, or the chairman of the Civil Bill Court, if either party so require, may hear any such application in his

private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married woman  
as an executrix  
or trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*.

Saving of exist-  
ing settlements,  
and the power to  
make future  
settlements.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. (a)

Married woman  
to be liable to the  
parish for the  
maintenance of  
her husband—  
31 & 32 Vict.  
c. 122.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared

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(a) The effect of sect. 19 is to leave settlements absolutely untouched by the Act at all as regards property, which, if the Act had not been passed, would have been affected by them: (*Re Stonor's Trusts*, 48 L. T. 963.)

to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a *feme sole* by the same actions and proceedings as money lent.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Married woman to be liable to the parish for the maintenance of her children.

22. The Married Women's Property Act, 1870 (a), and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

Repeal of 33 & 34 Vict. c. 93 and 37 & 38 Vict. c. 50.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

Legal representative of married woman.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

Interpretation of terms.

25. The date of the commencement of this Act shall be the 1st January, 1883.

Commencement.

## MASTER AND SERVANT.

### *The Wages Attachment Abolition Act, 1870.*

33 & 34 Vict, c. 30.

1. After the passing of this Act, no order for the attachment

(a) The only point necessary to be borne in mind in regard to this Act is that in the case of marriages between 9th August, 1870, and 30th July, 1874, the husband is not liable to any extent for his wife's ante-nuptial debts.

of the wages of any servant (*a*), labourer, or workman, shall be made by the judge of any court of record or inferior court.

*The Employers' Liability Act, 1880.*

43 & 44 VICT. c. 42. (*b*)

Amendment of  
law.

1. Where, after the commencement of this Act, personal injury is caused to a workman

(1.) By reason of any defect in the condition of the ways (*c*), works, machinery, or plant connected with or used in the business of the employer; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him while in the exercise of such superintendence; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway, (*d*)

the workman, or in case the injury results in death, the legal

(*a*) A secretary in receipt of 200*l.* per annum is not a "servant" within this Act: (*Roberts v. Death*, 46 L. T. 246; 8 Q. B. Div. 319.)

( ) The fact of a workman contracting himself out of the Act bars an action under Lord Campbell's Act, 9 & 10 Vict. c. 93 (see p. 111), in case he is accidentally killed through the negligence of a fellow workman "intrusted with superintendence" within the meaning of this Act: (*Griffiths v. Earl of Dudley*, 47 L. T. 10.)

(*c*) This must be some defect or alteration in the permanent condition of the way itself; and obstacles lying on the way which do not in any degree alter the fitness for the purpose for which it is generally employed, and cannot be said to be incorporated with it, do not make it defective within the meaning of this section: (*McGiffin v. Palmer's Shipbuilding and Iron Company Limited*, 47 L. T. 346.)

(*d*) The word "railway" in this sub-section is used in its ordinary and popular meaning. A temporary line or tramway laid down by a contractor is a "railway" within it: (*Doughty v. Firbank*, 48 L. T. 530.) A steam crane is not "a locomotive engine upon a railway" within the Act: (*Murphy v. Wilson*, 48 L. T. 788.)

personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman or nor in the service of the employer, nor engaged in his work.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say, Exceptions to amendment of law.

(1.) Under sub-section 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section 4 of section 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that, where a rule or bye-law has been approved, or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer, or such superior, already knew of the said defect or negligence.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury. Limit of sum recoverable as compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice (a) that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the Limit of time for recovery of compensation.

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(a) The notice must be in writing, giving in writing all the particulars required by the statute, and must be contained either in one document or in documents connected together by express reference. Per Lord Coleridge: The notice must be contained in one document: (*Keen v. Milwall Dock Company*, 46 L. T. 472; 8 Q. B. Div. 482; 51 L. J. 277, Q. B.)

accident causing the injury, or, in case of death, within twelve months from the time of death; Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Money payable  
under penalty to  
be deducted  
from compensa-  
tion under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman, in respect of any cause of action arising under this Act, any penalty, or part of a penalty, which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons, in respect of the same cause of action; and, when an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person, shall not be entitled thereafter to receive any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action.

Trial of actions.

6. (1.) Every action for recovery of compensation under this Act shall be brought in a County Court, but may, upon the application of either plaintiff or defendant, be removed into a Superior Court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.) Upon the trial of any such action in a County Court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a County Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in County Courts.

Mode of serving  
notice of injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to, or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post, by a registered letter

addressed to the person on whom it is to be served at his last known place of residence or place of business ; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading. (a)

8. For the purposes of this Act, unless the context otherwise Definitions. requires,—

The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

The expression “employer” includes a body of persons corporate or unincorporate :

The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

9. The Act came into operation on the 1st January, 1881 ; Commencement of Act. and—

10. Is to continue in force till 31st December, 1887, and to the end of the then next session in Parliament.

## MERCANTILE LAW AMENDMENT.

*The Mercantile Law Amendment Act, 1856.*

19 & 20 VICT. c. 97. (b)

1. No writ of execution and no writ of attachment against the Sale of goods after execution issued, but before seizure.

(a) A notice given to an employer under sects. 4 and 7 omitted to state the cause of the injury. Held, that this was a defective notice, which might be amended under the last clause of sect. 7 : (*Stone v. Hyde*, 46 L. T. 421 ; 9 Q. B. Div. 76.)

(b) For other sections of this Act, see title “Limitation of Actions (Miscellaneous Acts),” p. 191.



goods of a debtor shall prejudice the title to such goods acquired by any person *bond fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ, provided such person had not at the time when he acquired such title notice that such writ or any other writ by virtue of which such goods might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff, or coroner.

Action for  
specific delivery  
of goods.

2. In actions in any court of record for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff, and by leave of the judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered, what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof, what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution as hereinafter mentioned, and what damages if not so delivered; and thereupon, if judgment shall be given for the plaintiff, the court or any judge thereof, at their or his discretion, on the application of the plaintiff, may order execution to issue for the delivery, on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid, of the said goods without giving the defendant the option of retaining the same upon paying the damages assessed.

If such goods or any part thereof cannot be found, and unless the court or such judge as aforesaid shall otherwise order, the sheriff or other officer of such court of record shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick or within the jurisdiction of such other court of record till the defendant deliver such goods, or at the option of the plaintiff cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof, provided that the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages, costs, and interest in such action.

Consideration  
for guarantee.

3. No special promise to be made by any person after the passing of this Act, to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.

Guarantee to or  
for a firm.

4. No promise to answer for the debt, default, or miscarriage of another made to a firm consisting of two or more persons, or



to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading as aforesaid, shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading as aforesaid, unless the intention of the parties that such promise shall continue to be binding notwithstanding such change shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

5. Every person who being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, &c., shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor and to use all the remedies, and if need be and upon a proper indemnity to use the name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him. *Proviso:* No co-surety, co-contractor, or no co-debtor shall be entitled to recover from any other co-surety, &c., by the means aforesaid more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

Rights of surety who discharges liability.

## MORTGAGES.

*The Common Law Procedure Act, 1852.*

15 & 16 VICT. c. 76.

219. Where an action of ejectment (a) shall be brought by any mortgagee, his heirs, executors, administrators, or assignees, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be depending for or touching the foreclosing or redeeming of the same, if the

Ejectment by mortgagee.

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(a) In the Rules of the Supreme Court this action is called "an action for the recovery of land."

person having right to redeem the same, and who shall appear and become defendant in such action, shall at any time pending such action pay unto such mortgagee, or, in case of his refusal, shall bring into court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit upon such mortgage (such money for principal, interest, and costs to be computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose), the moneys so paid to such mortgagee, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court (a) shall and may discharge every such mortgagor or defendant from the same accordingly; and shall and may compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody, relating to the title of the same, unto such mortgagor, who shall have paid or brought such moneys into the court, his heirs, executors, or administrators, or to such other person or persons as he or they shall for that purpose nominate or appoint.

Where right of redemption disputed.

220. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed shall (by writing under his hand, or the hand of his agent, or solicitor, to be delivered before the money shall be brought into such court, to the solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or subsequent incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

*An Act to Amend the Law relating to the Administration of the Estates of Deceased Persons.*

17 & 18 Vict. c. 113.

Heir or devisee not to claim payment of mortgage out of personal estate.

1. When any person shall, after the 31st December, 1854, die seised of or entitled to any estate or interest in any land or other

(a) Or judge at chambers: (*Lawrence v. Hogben*, 26 L. J. 55, Ex.)

hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage debt discharged or satisfied out of the personal or other real estate of such person, but the lands or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole. (a)

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*Real Estate Charges Act Amendment Act.*

30 & 31 VICT. c. 69.

1. In the construction of the will of any person who may die after the 31st December, 1867, a general direction that the debts, or that all the debts of the testator, shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the 17 & 18 Vict. c. 113, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate. General directions for payment of debts out of personalty.

2. In the construction of the said Act and of this Act the word "mortgage" shall be deemed to extend to any lien for unpaid purchase money upon any lands or hereditaments purchased by a testator. Mortgage."

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*Exoneration of Charges Act.*

40 & 41 VICT. c. 34.

1. The 17 & 18 Vict. c. 113, and the 30 & 31 Vict. c. 69, shall, as to any testator or intestate dying after 31st December, 1877, be held to extend to a testator or intestate dying seised or possessed of or entitled to any land or other hereditaments of whatever tenure which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage or any other equitable charge, including any Extension of 17 & 18 Vict. c. 113, and 30 & 31 Vict. c. 69.

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(a) As between two portions of the same mortgaged estate, that portion passing by a residuary devise is liable for the whole mortgaged debt, in exoneration of that portion specifically devised: (*Brownson v. Lawrence*, 7 Bar Rep. 143.)

lien for unpaid purchase money; and the devisee or legatee, or heir, shall not be entitled to have such sum or sums discharged or satisfied out of any other estate of the testator or intestate, unless (in the case of a testator) he shall within the meaning of the said Act have signified a contrary intention; and such contrary intention shall not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate, or residuary real estate.

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*The Conveyancing Act, 1881.*

44 & 45 VICT. c. 41.(a)

IV.—MORTGAGES.

Obligation on mortgagee to transfer instead of reconveying.

15.(b) (1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds.

16. (1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages.

17. (1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

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(a) For other sections, see *ante*, titles "Infants," and "Leases," and *post*, titles, "Real Property (Miscellaneous Acts)," and "Trustees, Executors, and Administrators."

(b) And see 45 & 46 Vict. c. 89, s. 12, *post*.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

*Leases.*

18. (1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised. Leasing powers of mortgagor and of mortgagee in possession.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorises are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years ; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

*Sale ; Insurance ; Receiver ; Timber.*

Powers incident  
to estate or  
interest of mort-  
gagee.

19. (1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the

- mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and
- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
  - (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; and
  - (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

Regulations as to  
exercise of power  
of sale.

- (i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or



- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due ; or
- (iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance,  
receipt, &c., on  
sale.

21. (1.) A mortgagee exercising the power of sale conferred by this Act shall have power by deed to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage ; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case has arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised ; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise ; and, secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage ; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.



(7.) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22. (1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

*Mortgagee's receipts, discharges, &c.*

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under a power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

23. (1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two-third parts of the amount that would be required, in case of total destruction, to restore the property insured.

*Amount and application of insurance money.*

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

- (i.) Where there is a declaration in the mortgage deed that no insurance is required;
- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require

that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment,  
powers, remuneration,  
and duties of receiver.

24. (1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
- (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the

cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

*Action respecting Mortgage.*

25. (1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative. Sale of mortgaged property in action for foreclosure, &c.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if he thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the court, to meet the expense of sale and to secure performance of the terms. (a)

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

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(a) The court has power, after an ordinary foreclosure judgment has been given, but before foreclosure has become absolute, to direct a sale on the petition of a second mortgagee who has redeemed the first: (*The Union Bank v. Ingram*, 46 L. T. 507.) The rule that where one tenant in common has mortgaged his interest to another tenant in common, the mortgagor cannot enforce a partition or sale against the will of the mortgagee except on the terms of paying off the mortgage, is not affected by this section: (*Gibbs v. Haydon*, 46 L. T. 184.) The court has power in an action for redemption to make an order for sale on an interlocutory application by the mortgagor; but the exercise of such power is discretionary: (*Woolley v. Colman*, 46 L. T. 737.)

(5.) This section applies to actions brought either before or after the commencement of this Act.

#### V.—STATUTORY MORTGAGE.

Form of statutory mortgage in schedule.

26. (1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the third schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall reconvey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage in schedule.

27. (1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the third schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will, thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Implied covenants joint and several.

29. A reconveyance of a statutory mortgage may be made by Form of recon-  
a deed expressed to be made by way of statutory reconveyance of  
mortgage, being in the form given in Part III. of the third  
schedule to this Act, with such variations and additions, if any,  
as circumstances may require. reconveyance of statu-  
tory mortgage in  
schedule.

## PART I.

### ***Deed of Statutory Mortgage.***

**THIS INDENTURE** made by way of statutory mortgage the                  day of

18 between A. of [§c.] of the one part and M. of [§c.] of the other part WITNESSETH that in consideration of the sum of £ now paid to A. by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and as beneficial owner hereby conveys to M. All that [§c.] To hold to and to the use of M. in fee simple for securing payment on the day of 18 of the principal sum of £ as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness, &c.

\*. Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.

## PART II.

### (A.)

#### *Deed of Statutory Transfer, Mortgagor not joining.*

THIS INDENTURE made by way of statutory transfer of mortgage the day of 18 between M. of [§c.] of the one part and T. of [§c.] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 18 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to M. by T. being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum M. hereby acknowledges the receipt M. as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, &c.

### (B.)

#### *Deed of Statutory Transfer, a Covenantor joining.*

THIS INDENTURE made by way of statutory transfer of mortgage the day of 18 between A. of [§c.] of the first part B. of [§c.] of the second part and C. of [§c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 18 and made between [§c.] WITNESSETH that in consideration of the sum of £ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the concurrence of B. who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, &c.

### (C.)

#### *Statutory Transfer and Statutory Mortgage combined.*

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 18 between A. of [§c.] of the first part B. of [§c.] of the second part and C. of [§c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 18 and made between [§c.] WHEREAS the principal sum of £ only remains due in respect of the said mortgages as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid \* A. as mortgagee hereby conveys and transfers to C. the benefit of said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby conveys and confirms to C. All that

[&c.] To hold to and to the use of *C.* in fee simple for securing payment on the       day of       18       of † the sum of       £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness, &c.

[*Or, in case of further advance, after aforesaid at \* insert and also in consideration of the further sum of       £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, and after of at † insert the sums of       £ and       £ making together       £*]

\*. Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

### PART III.

#### *Deed of Statutory Reconveyance of Mortgage.*

THIS INDENTURE made by way of statutory reconveyance of mortgage the       day of       18       between *C.* of [&c.] of the one part and *B.* of [&c.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the       day of       18       and made between [&c.] WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

\*. Variations as noted above.

### *The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39.

#### *Mortgages.*

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881 (*a*), to require a mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Reconveyance on mortgage.

### NATURALIZATION.

#### *The Naturalization Act, 1870.*

33 VICT. c. 14.

2. Real and personal property of every description (*b*) may be held and disposed of by an alien in the same manner as by a natural-born British subject, and a title to real and personal

Capacity of aliens as to property.

(*a*) *Ante*, p. 216.

(*b*) Except a British ship (sect. 14).

property of every description may be derived through, from, or in succession to an alien in like manner.

*Proviso*: This section shall not entitle an alien to—(1.) Hold real property out of the United Kingdom. (2.) Any rights or privileges as a British subject, except such in respect of property as are hereby expressly given to him.

Jury *de medietate linguae*.

5. Aliens are no longer to be entitled to be tried by a jury *de medietate linguae*.

Certificate of naturalisation.

7. An alien may obtain a certificate of naturalization from the Secretary of State in the manner mentioned in this section, and shall then be entitled to all the rights and privileges and be subject to all obligations of a natural-born British subject.

### *The Naturalization Act, 1872.*

35 & 36 VICT. c. 39.

After reciting the supplementary Convention (a) signed at Washington, 23rd February, 1872, it is enacted—

Renunciation of nationality.

2. Any renunciation of naturalization or of nationality in manner provided by the said supplementary Convention by the persons and under the circumstances in the said convention in that behalf mentioned, shall be valid and shall be deemed to be authorised by the Naturalization Act, 1870.

Property of married women.

3. Nothing contained in the Naturalization Act, 1870, shall deprive any married woman of any estate or interest in real or personal property to which she may have become entitled previously to the passing of that Act, or affect such estate or interest to her prejudice.

## PARLIAMENTARY LANGUAGE.

### *An Act for Shortening the Language used in Acts of Parliament.*

13 & 14 VICT. c. 21.

Meaning of certain words in statutes.

4. Words importing the masculine gender shall be taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary is expressly provided.

The word "month" shall mean calendar month unless words be added showing a lunar month to be intended.

"County" shall also mean county of a town or city, unless such extended meaning is expressly excluded by words.

"Land" shall include messuages, tenements, and hereditaments, houses, and buildings, unless where there are words to

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(a) For a copy of the Convention see the schedule to the Act: (Paterson's Pract. Stat. 1872, p. 128 ; 1 Chitty's Statutes, 4th edit. 87.)



exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure.

“Oath,” “swear,” and “affidavit,” shall include affirmation, declaration, affirming, and declaring in the case of persons by law allowed to declare or affirm instead of swearing.

5. Where any Act repealing in whole or in part any former Act is itself repealed, such former Act or provisions shall not be revived unless words be added reviving such Act or provisions. Where repealing Act repealed.

6. The repealed provisions of any Act shall remain in force until the substituted provisions (if any) come into force. Repealed provisions.

7. Every Act made after the commencement of this Act shall be taken to be a public Act, and shall be judicially taken notice of as such unless the contrary be expressly provided and declared by such Act. “Public Act.”

### *Statutes (Definition of Time) Act, 1880.*

43 & 44 VICT. c. 9.

1. Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time. Meaning of expressions relating to time.

## PARTITION.(a)

### *The Partition Act, 1868.*

31 & 32 VICT. c. 40.

3. In a suit for partition where, if this Act had not been passed, a decree for partition might have been made, if it appears to the court (b) that by reason of the nature of the property, or the number of the parties interested, or presumptively interested therein, or of the absence of disability of some of those parties, or any other circumstance, a sale of the property and distribution of proceeds would be more beneficial for the parties interested than a division of the property, the court *may*, on the request of any of the parties interested, notwithstanding the dissent of others, direct a sale, and give necessary directions. (c) Power to court to order sale instead of division.

4. In a like suit, if a party or parties interested individually Sale on application of parties.

(a) See also 8 & 9 Vict. c. 106, ss. 3 and 4, title, “Real Property (Miscellaneous Acts).”

(b) *I.e.*, the Chancery Division (sect. 2).

(c) The court can order a partition or sale even if the property is subject to a power of sale vested in trustees who are able and willing to exercise such power. This will not be done, however, when the trustees are intending to exercise the power: (*Boyd v. Allen*, 48 L. T. 628.)

or collectively, to the extent of one moiety or upwards in the property, request the court to direct a sale and distribution of proceeds, instead of a division of the property, the court *shall*, unless it sees good reason to the contrary, direct a sale, and give necessary directions. (a)

As to purchase  
of share of party  
desiring sale.

5. In a like suit, if any party interested requests the court to direct a sale instead of a division of the property, the court *may*, unless the other parties, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale, and give necessary directions; and, in case such undertaking shall be given, may order a valuation of the share, and give necessary directions. (b)

Authority for  
parties inter-  
ested to bid.

6. On any sale under this Act, the court may allow any of the parties interested to bid, on such terms, as to non-payment of deposit, or as to setting off or accounting for the purchase money, or any part thereof, instead of paying the same, or as to any other matters, as to the court shall seem reasonable.

Trustee Act,  
1850.

7. Sect. 30 of the Trustee Act, 1850, shall apply to sales under this Act. (c)

Proceeds of sale.

8. Sects. 23, 24, and 25, of the 19 & 20 Vict. c. 120 (d), shall apply to the proceeds of sales under this Act.

Parties to  
partition suits.

9. Any person who, if this Act had not passed, might have maintained a suit for partition, may maintain the same against one or more of the parties interested, without serving the other or others. No defendant shall object for want of parties. At the hearing, the court may direct inquiries as to the nature of the property, persons interested, and other matters, with a view to an order for partition or sale, on further consideration. The persons who, if this Act had not passed, would have been necessary parties to the suit, shall be served with notice of the decree or order made on the hearing, and after notice, shall be bound, and

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(a) The court can refuse a sale where it is manifestly asked through vindictive feeling, or is on any other ground unreasonable: (Lord Hatherley, in *Pemberton v. Barnes*, 6 Ch. 693.)

(b) Sect. 5 is not to be construed as a proviso on the 3rd and 4th sections, but as a substantive enactment: (*Pitt v. Jones*, 43 L. T. 885; 5 H. of L. 651; 50 L. J. 795, Ch.) In consequence of this decision, a plaintiff in a partition action who desires a sale must expressly state in his pleadings that a sale will be more beneficial. The mere statement of facts which tend *prima facie* to show that a sale will be more convenient, but which do not exclude the operation of sect. 5, will not debar the defendant from insisting on a partition on offering to buy the plaintiff's interest: (*Evans v. Evans*, 48 L. T. 567; 52 L. J. 304, Ch.)

(c) Sect. 1 of the Trustee Extension Act (15 & 16 Vict. c. 55) also applies to sales under the Partition Acts: (*Beckett v. Sutton*, 46 L. T. 481; 19 Ch. Div. 646; 51 L. J. 432, Ch.) For these sections see *post*, title, "Trustees, Executors, and Administrators."

(d) This Act has been repealed, but sects. 34, 35, and 36 of 40 & 41 Vict. c. 18 (see title "Settled Estates"), are similar in effect to sects. 23, 24, and 25 of 19 & 20 Vict. c. 120.

deemed parties to the suit. Any such person may apply to the court to add to the decree or order.

12. The County Courts shall have jurisdiction under this Act County Courts. where the value of the property does not exceed 500*l*.

*Partition Act (1868) Amendment Act.*

39 & 40 VICT. c. 17.

3. Where in an action for partition it appears to the court that the notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the court may, if it think fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and, instead thereof, may direct advertisements to be published at such time and in such manner as the court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served, to come in and establish their respective claims in respect thereof before the judge in chambers within a time to be thereby limited. After the expiration of the time so limited all persons who shall not have so come in and established such claims, whether they are within or without jurisdiction of the court (including persons under any disability), shall be bound by the proceedings in the action as if on the day of the date of the order dispensing with service they had been served with notice of the judgment, service whereof is dispensed with; and thereupon the powers of the court under the Trustee Act, 1850 (a), shall extend to their interests in the property to which the action relates as if they had been parties to the action; and the court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

Power to dispense with service of notice of decree or order in special cases.

4. Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the court, the following provisions shall have effect:

Proceedings where service is dispensed with.

- (1.) The proceeds of sale shall be paid into court to abide the further order of the court:
- (2.) The court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time:

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(a) See title "Trustees, Executors, and Administrators."

- (3.) The court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made :
- (4.) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the court shall distribute the proceeds in accordance with the rights of those persons :
- (5.) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the court that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the court shall distribute the proceeds in such manner as it appears to the court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all these persons are or are not before the court, and with such reservation (if any) as to the court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the court to have any *prima facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision for  
case of suc-  
cessive sales in  
same action.

5. Where in an action for partition two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

Request by  
married woman,

6. In an action for partition a request for sale may be made

or an undertaking to purchase given on the part of a married woman (a), infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorised by order in lunacy), or other person authorised to act on behalf of the person under such disability, but the court shall not be bound to comply with any such request or undertaking on the part of an infant unless it appear that the sale or purchase will be for his benefit.

infant, or person under disability.

7. For the purposes of the Partition Act, 1868, and of this Act, an action for partition shall include an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Action for partition to include action for sale and distribution of the proceeds.

## PARTNERSHIP.

### *Partnership Amendment Act.*

28 & 29 VICT. c. 86.

1. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract (b) in writing with such person, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner, or render him responsible as such.

Loan on contract to receive share of profits.

2. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits shall of itself render such servant or agent responsible as a partner therein nor give him the rights of a partner.

Servants and agents.

3. No person being the widow or child of the deceased partner of a trader and receiving by way of annuity a portion of the profits made by such trader in his business, shall by reason only of such receipt be deemed a partner of or subject to the liabilities of such trader.

Annuitants

4. No person receiving by way of annuity or otherwise a portion of the profits of any business in consideration of the sale by him of the goodwill of such business shall by reason

Vendor of good will.

(a) The request for sale by a married woman must be in the form of a request in writing under her own signature, authorising and requesting her solicitor to instruct counsel to ask on her behalf for a sale: (*Grange v. White*, 45 L. T. 128; 18 Ch. Div. 612; 50 L. J. 620, Ch.)

(b) The contract, to be within this section, must on the face of it show that the transaction is a loan: (Lord Chelmsford, in *Syers v. Syers*, 1 App. Cas. 185.)

only of such receipt be deemed to be a partner of or subject to the liabilities of the person carrying on such business.

Effect of bank-  
ruptcy of trader.

5. In the event of any such trader as aforesaid being adjudged a bankrupt, or arranging to pay his creditors less than 20s. in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or profits, or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied. (a)

"Person."

6. In the construction of this Act the word "person" shall include a partnership firm, a joint-stock company, and a corporation.

## PATENTS, DESIGNS, AND TRADE MARKS.

### *The Merchandise Marks Act, 1862.*

25 & 26 VICT. c. 88. (b)

Sale of article  
with trade mark

19. After the 31st of December, 1863, the vendor of an article with a trade mark thereon shall be deemed to contract that the trade mark is genuine, and not wrongfully used, unless the contrary be expressed in writing signed by or on behalf of the vendor and delivered to and accepted by the vendee.

Sale of article  
with description  
of number, &c.

20. After the 31st of December, 1863, the vendor of an article with a description upon it of number, quantity, measure, or weight of such article, or the place or county where the same shall have been manufactured, shall be deemed to contract that no such description was in any material respect untrue, unless the contrary, &c. (as in sect. 19).

### *The Patents, Designs, and Trade Marks Act, 1883.*

46 & 47 VICT. c. 57.

#### PART I.—*Preliminary.*

Commencement  
of Act.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the 31st December, 1883.

#### PART II.—*Patents.*

##### *Application for and Grant of Patent.*

Persons entitled  
to apply for  
patent.

4. (1.) Any person, whether a British subject or not, may make an application for a patent.

(a) The lender may, however, retain any security which he may have taken: (*Ex parte Sheil*, 4 Ch. Div. 789.)

(b) For other sections of this Act see *post*, Part IV.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

5. (1.) An application for a patent must be made in the form set forth in the first schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the Patent Office in the prescribed manner. Application and specification.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject-matter of the invention. Reference of application to examiner.

7. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the comptroller may require that the application, specification, or drawings be amended before he proceeds with the application. Power for comptroller to refuse application or require amendment.

(2.) Where the comptroller requires an amendment, the applicant may appeal from his decision to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty



of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention ; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.

(6.) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.

Time for leaving  
complete speci-  
fication.

8. (1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

Comparison of  
provisional and  
complete speci-  
fication.

9. (1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction ; but any such refusal shall be subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the court or officer having power to order discovery in such legal proceedings shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

Advertisement  
on acceptance of  
complete speci-  
fication.

10. On the acceptance of the complete specification the comptroller shall advertise the acceptance ; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Opposition to  
grant of patent.

11. (1.) Any person may at any time within two months from



the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in the specification bearing the same or a similar title and accompanying a previous application, but on no other ground.

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and any person so giving notice, and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

12. (1.) If there is no opposition, or, in case of opposition, Sealing of patent. if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the Patent Office.

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

(a.) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(b.) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

13. Every patent shall be dated and sealed as of the day of Date of patent. the application : Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification : Provided also, that in case of more than one application for a patent for the same invention, the

sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

*Provisional Protection.*

Provisional protection.

14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

*Protection by Complete Specification.*

Effect of acceptance of complete specification.

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification; Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

*Patent.*

Extent of patent.

16. Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man.

Term of patent.

17. (1.) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) If, nevertheless, in any case, by accident, mistake or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment.

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:

(a.) The time for making any payment shall not in any case be enlarged for more than three months.

(b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the court before which the proceeding is proposed to be taken may, if it shall think

fit, refuse to award or give any damages in respect of such infringement.

*Amendment of Specification.*

18. (1.) An applicant or a patentee may, from time to time, Amendment of specification. by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

19. (1.) In an action for an infringement of a patent, and in a proceeding for revocation of a patent, the court or a judge may at any time order that the patentee shall, subject to such terms Power to disclaim part of invention during action, &c.

as to costs and otherwise as the court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Restriction on  
recovery of  
damages.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the court that his original claim was framed in good faith and with reasonable skill and knowledge.

Advertisement of  
amendment.

21. Every amendment of a specification shall be advertised in the prescribed manner.

#### *Compulsory Licences.*

Power for Board  
to order grant of  
licences.

22. If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—

(a.) The patent is not being worked in the United Kingdom ;  
or

(b.) The reasonable requirements of the public with respect to the invention cannot be supplied ; or

(c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed, the board may order the patentee to grant licences on such terms as to the amount of royalties, security for payment, or otherwise, as the board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by *mandamus*.

23. As to register of patents.

24. As to fees.

#### *Extension of Term of Patent.*

Extension of  
term of patent on  
petition to Queen  
in Council.

25. (1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term ; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a *caveat*, addressed to the registrar of the council at the Council Office, against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said committee shall proceed to consider the same, and the petitioner and any person who has entered a *caveat* shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

#### *Revocation.*

26. (1.) The proceeding by *scire facias* to repeal a patent is hereby abolished. Revocation of patent.

(2.) Revocation of a patent may be obtained on petition to the court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland :

(b.) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland :

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims :

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee :

(e.) Any person alleging that he, or any person under or through whom he claims any interest in any trade, business, or manufacture, had publicly manufactured, used, or sold,

within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

#### *Crown.*

Patent to bind  
Crown.

27. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

#### *Legal Proceedings.*

Hearing with  
assessor.

28. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the court shall otherwise direct.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the court or the Court of Appeal or Judicial Committee, as the case may be, and be paid

in the same manner as the other expenses of the execution of this Act.

29. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the court or the judge, at any subsequent time, particulars of the breaches complained of. Delivery of particulars.

(2.) The defendant must deliver with his statement of defence, or, by order of the court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended by leave of the court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

30. In an action for infringement of a patent, the court or a judge may on the application of either party make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the court or a judge may see fit. Order for inspection, &c., in action.

31. In an action for infringement of a patent, the court or a judge may certify that the validity of the patent came in question; and if the court or a judge so certifies, then in any subsequent action for infringement, the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs charges and expenses as between solicitor and client, unless the court or judge trying the action certifies that he ought not to have the same. Certificate of validity questioned and costs thereon.

32. Where any person claiming to be the patentee of an invention, by circulars advertisements or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture use sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, Remedy in case of groundless threats of legal proceedings.



use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats : Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

*Miscellaneous.*

Patent for one invention only.

33. Every patent may be in the form in the first schedule to this Act, and shall be granted for one invention only, but may contain more than one claim ; but it shall not be competent for any person in an action, or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

34. (1.) If a person possessed of an invention dies without making application for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Assignment for particular places.

36. A patentee may assign his patent for any place in or part of the United Kingdom or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

Loss or destruction of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officer.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act ; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the court.

39. Exhibition at an industrial or international exhibition is not to prejudice patent rights ; provided the conditions contained in this section are complied with.

40. As to publication of illustrated journals, indexes, &c.

41. As to the Patent Museum.



42. Power to the Department of Science and Art to require models on payment for same.

43. As to use of an invention by foreign vessels in British waters.

44. As to assignment to the Secretary for War of certain inventions.

### *Existing Patents.*

45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act. Provisions respecting existing patents.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

### *Definitions.*

46. In and for the purposes of this Act—

“Patent” means letters patent for an invention :

“Patentee” means the person for the time being entitled to the benefit of a patent :

“Invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (21 Jac. 1, c. 3), and includes an alleged invention.

Definitions of patent, patentee, and invention.

## **PART III.—*Designs.***

### *Registration of Designs.*

47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act. Application for registration of designs.

(2.) The application must be made in the form set forth in the first schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3.) The application must contain a statement of the nature

of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c.,  
to be furnished  
on application.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing photograph tracing representation or specimen which is not, in his opinion, suitable for the official records.

Certificate of  
registration.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

#### *Copyright in registered Designs.*

Copyright on  
registration.

50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking regis-  
tered designs.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the

design is registered ; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee ; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

Inspection of  
registered  
designs.

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Information as  
to existence  
copyright.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Cesser of copy-  
right in certain  
events.

55. As to register of designs.

56. As to fees.

57. As to exhibition at Industrial and International Exhibitions.

#### *Legal Proceedings.*

58. During the existence of copyright in any design—

- (a.) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural ; and
- (b.) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that

Penalty on piracy  
of registered  
design.

the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

Action for  
damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication sale or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

#### *Definitions.*

60. In and for the purposes of this Act—

Definition of  
"design,"  
"copyright."

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (54 Geo. 3, c. 56).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

Definition of  
proprietor.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

PART IV.—*Trade Marks.**Registration of Trade Marks.*

62. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark. Application for registration.

(2.) The application must be made in the form set forth in the first schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the court; and in that event the court shall have jurisdiction to hear and determine the appeal and may make such order as aforesaid.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned. Limit of time for proceeding with application.

64. (1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars: Conditions of registration of trade mark.

(a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c.) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters words or figures, or combination of letters words or figures, or of any of them.

(3.) Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the 13th August, 1875, may be registered as a trade mark under this part of this Act.

65. A trade mark must be registered for particular goods or classes of goods. Connection of trade mark with goods.

Registration of a series of marks.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour.

67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertisement of application.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

Opposition to registration.

69. (1.) Any person may within two months of the first advertisement of the application, give notice in duplicate at the patent office of opposition to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2.) Within two months after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the court.

Assignment and transmission of trade mark.

70. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the court.

Conflicting  
claims to regis-  
tration.

72. Except where the court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

Restrictions on  
registration.

(2.) The comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Further restric-  
tion on registra-  
tion.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

Saving for power  
to provide for  
entry on register  
of common  
marks as addi-  
tions to trade  
marks.

(a) In the case of an application for registration of a trade mark used before the 13th August, 1875—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made ;

(b.) In the case of an application for registration of a trade mark not used before the 13th August, 1875—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made ;

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the 13th August, 1875, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.



*Effect of Registration.*

Registration equivalent to public use.  
Right of first proprietor to exclusive use of trade mark.

75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

76. The registration of a person as proprietor of a trade mark shall be *primâ facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Restrictions on actions for infringement, and on defence to action in certain cases.

72. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the 13th August, 1875, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

78. As to register of trade marks.

79. As to removal of mark from register after fourteen years unless fresh fee paid.

80. As to fees.

81. As to Sheffield marks.

*PART V.—General.**Patent Office and Proceedings thereat.*

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed implied or constructive.

Refusal to grant patent, &c., in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs or trade marks, as proprietor of a patent, copyright in a design or trade mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise



deal with, the same and to give effectual receipts for any consideration for such assignment, licence or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Inspection of and  
extracts from  
registers.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the patent office, of or from patents specifications disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Sealed copies to  
be received in  
evidence.

90. As to rectification of register by court.

92. (1.) The registered proprietor of any registered trade mark may apply to the court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the court may refuse or grant leave on such terms as it may think fit.

Alteration of  
registered mark.

(2.) Notice of any intended application to the court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Falsification of  
entries in  
registers.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Exercise of dis-  
cretionary power  
by comptroller

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of  
comptroller to be  
evidence.

Applications and  
notices by post.

97. (1.) Any application, notice, or other document authorised or required to be left made or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to  
days for leaving  
documents at  
office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Declaration by  
infant, lunatic,  
&c.

99. If any person is, by reason of infancy lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

### *Offences.*

Penalty on  
falsely represent-  
ing articles to be  
patented.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connection with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Penalty on unauthorised assumption of Royal arms.

### *General Definitions.*

117 (1.) In and for the purposes of this Act, unless the context otherwise requires,—

General definitions.

“Person” includes a body corporate :

“The court” means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty’s High Court of Justice in England :

“Law officer” means Her Majesty’s Attorney-General or Solicitor-General for England :

“The Treasury” means the Commissioners of Her Majesty’s Treasury :

“Comptroller” means the Comptroller General of Patents, Designs, and Trade Marks :

“Prescribed” means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act :

“British possession” means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act :

“Legislature” includes any person or persons who exercise legislative authority in the British possession ; and where there are local legislatures as well as a central legislature, means the central legislature only.

## POWERS OF APPOINTMENT.(a)

*An Act to alter and amend the Law as to Appointments under Powers not exclusive.*

37 & 38 VICT. c. 37.

1. No appointment, which after the passing of this Act shall

Exclusion of objects.

(a) As to execution of powers of appointment, see 1 Vict. c. 26, s. 10, title “Wills,” and 22 & 23 Vict. c. 35, s. 12, title “Real Property (Miscellaneous Acts).”

be made in exercise of any power to appoint any property, real or personal, amongst several objects, shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, but every such appointment shall be valid and effectual, notwithstanding that any one or more of the objects shall not thereby, or in default of appointment, take a share or shares of the property subject to such power.

*Saving clause.*

2. Nothing herein contained shall prejudice or affect any provision in any deed, will, or other instrument, creating any power which shall declare the amount of the share or shares from which no object of the power shall be excluded, or some one or more object or objects of the power shall not be excluded.

## POWERS OF ATTORNEY.

*The Conveyancing Act, 1881.*

44 & 45 VICT. c. 41.

### XI.—POWERS OF ATTORNEY.

*Execution under power of attorney.*

46. (1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

*Payment by attorney under power without notice of death, &c., good.*

47. (1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

48. (1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

Deposit of original instruments creating powers of attorney.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

### *The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39.

#### *Powers of Attorney.*

8. (1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then in favour of a purchaser,—

Effect of power of attorney, for value, made absolutely irrevocable.

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

9. (1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power ; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened ; and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

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## PREScription.

*An Act for shortening the time of Prescription in certain cases.*

2 & 3 WILL. 4, c. 71.

Rights of common and other profits à prendre.

1. No claim, lawfully made, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of the King, or being parcel of the duchy of Lancaster, or of the duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for *thirty* years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty

years, but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed for *sixty* years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

2. In claims of rights of way, rights of water, and other easements, the periods are to be *twenty* years and *forty* years. In other respects, this section is similar to sect. 1. (a) Easements.

3. When the access and use of light to and for any dwelling house, workshop, or other building, shall have been actually enjoyed therewith (b) for *twenty* years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly, &c. (as in sect. 1). (c) Light.

4. Each of the said respective periods shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and no act or other matter shall be deemed to be an interruption within the meaning of this statute, unless the same shall be submitted to or acquiesced in for *one year* after the party interrupted shall have notice thereof and of the person making or authorising the same to be made. Before-mentioned periods deemed to be those before actions brought.

5. In pleadings to actions of trespass and other pleadings, where the party formerly used to allege his claim from time immemorial, the periods mentioned in this Act may be alleged; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact, or of law not inconsistent with the simple fact of enjoyment, the same Allegation in pleadings.

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(a) The way, &c., must have been enjoyed "as a right," and not merely by stealth, or by occasional permission: (*Bright v. Walker*, 1 O. M. & R. 211.) User which is neither physically preventible by the owner of the servient tenement, nor actionable, cannot found an easement: (*Sturges v. Bridgman*, 41 L. T. 219; 11 Ch. Div. 852; 48 L. J. 785, Ch.) A right of lateral support to a building by its adjacent soil is an easement, and may be acquired by twenty years' uninterrupted enjoyment: (*Commissioners of Public Works, &c., v. Angus and Co.*; *Dalton v. Angus*, 44 L. T. 844.) And, in the case of ancient adjoining buildings, the owner of the one can claim an easement of support from the other: (*Lemaitre v. Davis*, 46 L. T. 407; 19 Ch. Div. 281; 51 L. J. 173, Ch.)

(b) Occupation is not necessary: (*Courtauld v. Leigh*, 4 Ex. 126.)

(c) The consent or agreement mentioned in sect. 3 need not be signed by the person giving it. An agreement signed by the licensee, and the payment of a nominal rent is sufficient: (*Bewley v. Atkinson*, 41 L. T. 275; 13 Ch. Div. 283; 49 L. J. 6, Ch.)



shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

No presumption  
to be allowed.

6. In the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favour of support of any claim upon proof of the exercise or enjoyment of the right or matter claimed, for any less time than as before mentioned.

Disability.

7. The time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall be an infant, idiot, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except where the right or claim is hereby declared to be absolute and indefeasible.

Exclusion of  
time in certain  
cases

8. Provided that when any land or water upon, over, or from which any such way or other convenient watercourse, or use of water shall be enjoyed or derived, shall be held under or by virtue of any term of life, or any term of years exceeding three from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years (a) in case the claim shall, within three years next after the end or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof.

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## RAILWAYS.(b)

### *The Regulation of Railways Act, 1868.*

31 & 32 VICT. c. 119.

Damage during  
carriage by  
water.

14. In case of through booking, a condition exempting the company from liability for loss or damage during carriage by sea from the act of God, Queen's enemies, fire, and all other dangers and accidents of seas, rivers, and navigation, shall, if published in the booking office, and printed on the receipt or freight note, be valid as part of the contract.

Fares.

15. Lists of passengers' fares shall be exhibited at each station.

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(a) But not in the computation of the period of *twenty* years : (*Palk v. Skinner*, 22 L. J. 27 Q. B.)

(b) See also the Railway and Canal Traffic Act, *ante*, title "Carriers."



20. All railway companies except the "Metropolitan" shall provide smoking compartments for all classes, unless exempted by the Board of Trade. Smoking compartments.

22. Communication between the passengers and servants of the company in charge of the train shall be provided where the trains travel more than twenty miles without stopping. Communication with guards, &c.

24. Trees dangerous to railways may be removed, by order of two justices, and compensation paid in respect of the same. Trees.

25. Where a person shall be injured or killed by a railway accident, the Board of Trade upon application in writing made jointly by the company and such person or his representatives, if killed, may appoint an arbitrator, who shall determine the compensation (if any) to be paid. Arbitration in case of injury or death.

26. Power to a judge or arbitrator to order an examination of the injured person by a disinterested medical practitioner.

41. On the application of the company or claimant, questions of compensation in respect of lands taken by the company or injuriously affected by the execution of their works, may, if a judge of a superior court so order, be tried as an ordinary action. Claim for compensation for land.

## REAL PROPERTY (MISCELLANEOUS ACTS).

### *De Donis Conditionalibus.*

13 EDW. 1, c. 1.

#### *(The Origin of Estates Tail.)*

Before the passing of this statute, if lands were given to a man and the heirs of his body, he was able to alienate the same the moment he had issue born, and the intention of the donor was defeated. It was therefore enacted that—

2. Henceforth the will of the giver, according to the form in the deed of gift manifestly expressed, shall be observed, so that they to whom the land is given as aforesaid shall have no power to alien it, but it shall go to their own issue after their death, or revert to the giver or his heirs if issue fail. Will of donor to be observed.

### *Quia Emptores.*

18 EDW. 1, c. 1.

By this statute it is enacted that it shall be lawful to every freeman except the King's tenants *in capite*, to sell, at his own pleasure, his land or tenements, or part of them, so that the feoffee shall hold the same of the chief lord of the same fee, by such service and customs as his feoffor held before. Power to sell lands.

*An Act for Rendering a Release as Effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties.*

4. VICT. c. 21.

1. The substance of this section is contained in the above title.

2. The recital of a lease for a year, in a release executed before the passing of this Act (May 15, 1841), shall be evidence of the execution of such lease.

*An Act to Amend the Law of Real Property.*

8 & 9 VICT. c. 106.

Corporeal hereditaments to lie in grant.

2. After the 1st of October, 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

Feoffments, &c., to be by deed.

3. Feoffments (other than by an infant under a custom), partitions and exchanges (not being copyhold), leases required by law to be in writing (a), assignments of chattel interests (not being copyhold), in any tenements or hereditaments, and surrenders in writing of an interest in any tenements or hereditaments (not being a copyhold interest or an interest which might by law have been created without writing), made after the 1st of October, 1845, shall be void at law unless made by deed.

Feoffment not to operate by wrong.

4. A feoffment made after the 1st of October, 1845, shall not have any tortious operation. An exchange or partition of any tenements or hereditaments made by deed executed after that date shall not imply any condition in law. The word "give," or the word "grant," in deeds executed after that day, shall not imply any covenant in law in respect of any tenements or hereditaments, except by force of any Act of Parliament.

"Give."  
"Grant."

Interest under deed by person not a party.

5. Under an indenture executed after the 1st of October, 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken although the taker be

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(a) An instrument not under seal, and therefore void as a lease, may be valid as an agreement for a lease (*Stranks v. St. John*, 2 C. P. 379); and specific performance thereof may be decreed: (*Crook v. Corporation of Salford*, 6 Ch. 551.) And since the passing of the Judicature Act, 1873, a tenant in possession under an agreement for a lease has no longer two estates, one a legal tenancy from year to year, the other an equitable tenancy under the agreement; there is only one court, and the rule of equity prevails, viz., that the tenant is in the same position as if he were a lessee under a lease granted in the terms of the agreement: (*Walsh v. Lonsdale*, 46 L. T. 859; 21 Ch. Div. 9; 52 L. J. 2, Ch.)

not named a party to such indenture. A deed executed after that day, purporting to be an indenture, shall take effect as such, although not indented.

6. After the 1st October, 1845, a contingent, an executory, Contingent, &c., interest disposable by deed. and a future interest, and a possibility; coupled with an interest, in any tenements or hereditaments of any tenure, also a right of entry into or upon any tenements or hereditaments in England, whether immediate or future, vested or contingent, may be disposed of by deed; but no such disposition shall, by force only of this Act, defeat or enlarge an estate tail.

Such dispositions, if by married women, shall be made conformably to the provisions of the 3 & 4 Will. 4, c. 74 (a), relative to dispositions by married women. (b)

7. After the 1st of October, 1845, an estate or interest in any Disclaimer by married woman tenements or hereditaments in England, may be disclaimed by a married woman, by deed made conformably to the provisions of 3 & 4 Will. 4, c. 74. (b)

8. A contingent remainder shall be capable of taking effect, Contingent remainder notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, as if such determination had not happened. (c)

9. When the reversion expectant on a lease shall, after the Reversion expectant on lease. 1st October, 1845, be surrendered or merge, the estate which shall for the time being confer, as against the tenant under the same lease, the next vested right to the same tenements or hereditaments shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion as, but for the surrender and merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.

### *An Act to render the Assignment of Satisfied Terms unnecessary.*

8 & 9 VICT. c. 112.

1. Every satisfied term of years which, either by express Satisfied term to cease. declaration or construction of law shall, on the 31st of December, 1845, be attendant upon the inheritance or reversion of any lands, shall on that day cease and determine as to the land upon the inheritance or reversion whereof such term shall be so

(a) See sect. 77, *et seq.*, ante, p. 194.

(b) This will not be necessary if the interest accrued to the woman after the 31st December, 1882, on account of the provisions of the Married Women's Property Act, 1882, ante, p. 199.

(c) It will be seen that this section applies only to the three cases of forfeiture, surrender, or merger of the preceding estate. See, however, now, 40 & 41 Vict. c. 83, *infra*.

attendant, except that such term, if attendant by express declaration, shall afford the same protection against incumbrances as if it had continued to subsist, but had not been assigned after the 31st of December, 1845.

2. Every term of years becoming satisfied after the 31st of December, 1845, shall, immediately on becoming attendant, cease and determine as to the land upon the inheritance or reversion whereof such term shall become so attendant.

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*An Act to further Amend. the Law of Property and to relieve Trustees.*

22 & 23 VICT. c. 35. (a)

*Rentcharges.*

Release of part  
of land charged.

10. The release from a rentcharge of part of the hereditaments charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part thereof out of the hereditaments released, without prejudice to the rights of all persons interested in the hereditaments or property remaining unreleased and not concurring in or confirming the release.

*Powers.*

Execution of  
power of ap-  
pointment by  
deed.

12. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity. This provision shall not defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution thereof, or that any Act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument; and nothing herein contained shall prevent the donee of a power from executing it conformably to the power, by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

Mistaken pay-  
ment to tenant  
for life.

13. Where, under a power, a *bond fide* sale shall be made of an estate with the timber thereon, or any other articles attached

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(a) For other sections of this Act, see titles "Inheritance," "Judgments," "Leases," and "Trustees, Executors, and Administrators."

thereto, and the tenant for life or any other party to the transaction shall by mistake receive for his own benefit a portion of the purchase money, as the value of the timber, &c., the [Chancery Division] may, upon [action brought] or application in a summary way, declare that upon payment by the purchaser or claimant under him, of the full value of such timber, &c., at the time of sale, with interest, and the settlement of such principal money and interest under the direction of the court upon the parties in the opinion of the court entitled, the said sale ought to be established; and, upon such payment and settlement, the court may declare that the sale is valid. The costs of the application, as between solicitor and client, shall be paid by the purchaser or claimant under him.

#### *Assignment of Personalty.*

21. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or persons, or corporation, by the like means as he might assign the same to another.

#### *Purchasers.*

22. Crown debts shall be re-registered every five years to Crown debts. continue to bind.

23. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security. Application of purchase money.

24. Any seller or mortgagor of land, or of any chattels, real or personal, or *choses in action*, conveyed or assigned to a purchaser [or mortgagee (a)], or the solicitor or agent of any such seller or mortgagor, who shall, after the passing of this Act, conceal any settlement, deed, will, or other instrument, material to the title, or any incumbrance, from the purchaser [or mortgagee], or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him with intent, in any of such cases, to defraud, shall be guilty of a misdemeanor punishable by fine or imprisonment, not exceeding two years, with or without hard labour, or by both, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under them, for any loss sustained by them or either of them in consequence of such instrument or incumbrance so concealed, or of Concealment of title deeds and falsification of pedigree.

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(a) 23 & 24 Vict. c. 38, s. 8.

any claim made by any person under such pedigree, but whose right was concealed by the falsification thereof.

In estimating such damages where the estate shall be recovered from such purchaser or mortgagee, or those claiming under them, regard shall be had to any expenditure by them or either of them in improvements of the land.

No such prosecution shall be commenced without the sanction of the Attorney-General, or, in case that office be vacant, of the Solicitor-General; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intend to be prosecuted, as the Attorney-General or the Solicitor-General (as the case may be) shall direct.

### *Sale of Land by Auction Act, 1867.*

30 & 31 VICT. c. 48.

Employment of  
puffer.

4. Whenever a sale by auction of land (*a*) would be invalid at law by reason of the employment of a puffer, the same shall also be deemed invalid in equity.

Rule as to sale  
without reserve.

5. The particulars or conditions of sale of any land shall state whether the same will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved; if it is stated that such land will be sold without reserve, or to that effect, it shall not be lawful for the seller to employ any person to bid at the sale, or for the auctioneer to take knowingly any bidding from such person. (*b*)

Power of seller  
to bid.

6. Where any sale by auction of land is declared in any particulars or conditions to be subject to a right for the seller to bid, it shall be lawful for the seller, or any one person on his behalf, to bid at the auction in such manner as he may think proper. (*b*)

Opening  
biddings.

7. The practice of opening biddings by order of the Court of Chancery shall be discontinued unless on the ground of fraud, or improper conduct in the management of the sale.

### *The Vendor and Purchaser Act, 1874.*

37 & 38 VICT. c. 78.

Forty years title  
substituted for  
sixty years.

1. In the completion of any contract of sale of land made

(*a*) "Land" here means "any interest in any messuages, lands, tenements, or hereditaments of whatever tenure:" (sect. 3.)

(*b*) If the conditions state the sale is subject to a reserve bidding, it is illegal to employ a person to bid up to the reserved price, unless the right to do so is expressly stipulated for: (*Gilliat v. Gilliat*, 9 Eq. 60.) But where the vendor reserved a right to bid *once*, and the auctioneer, with his sanction, bid *thrice*, whereupon the vendor stated the reserve price, the sale was held voidable at the purchaser's option: (36 L. T. 251.)

after 31st December, 1874, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; but earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required. (a)

2. In the completion of any such contract, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules :

Rules for regulating obligations and rights of vendor and purchaser.

- (1.) Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.
- (2.) Recitals, statements, and description of facts, matters, and parties contained in deeds, instruments, Acts of Parliaments, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.
- (3.) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.
- (4.) Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.
- (5.) Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of sect. 2.

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by

Trustees.  
Married woman.  
Non-registration of will in Middlesex, &c.

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(a) *E.g.*, an advowson, to which the title for one hundred years may be required in absence of a stipulation to the contrary.

law in that behalf, (a) an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

9. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time and from time to time apply in a summary way to a judge of the [Chancery Division] in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid. (b)

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*Contingent Remainders Act.*

40 & 41 VICT. c. 33.

Cases in which  
contingent  
remainders  
capable of  
taking effect.

1. Every contingent remainder created by any instrument executed after the passing of this Act, (c) or by any will or codicil revived or republished by any will or codicil executed after that date, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as if the contingent remainder had originally been created as a springing or shifting use, or executory devise, or other executory limitation.

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(a) Six months from death of testator, dying in Great Britain, or three years from death if dying upon or beyond the sea: (7 Anne, c. 20, s. 8; 2 & 3 Anne, c. 4, s. 20.)

(b) Short points of law or construction arising upon the abstract, or upon the requisitions, or in respect of the contract, may be brought before the judge, but not questions of disputed facts: (*Popple v. Barratt*, 25 W. R. 248.) A purchaser who has obtained an order on summons which has disposed of every objection which he thought fit to raise, and under which the vendor has been ordered to make compensation, is not entitled to bring an action for specific performance; but, if the vendor does not comply with the order, the purchaser should apply in chambers to get it enforced: (*Thompson v. Ringer*, 44 L. T. 507.) Return of deposit with interest may be ordered on a summons under this section: (*Re Smith and Stott's contract*, 48 L. T. 512.) For the practice under this section, see Haynes's Chancery Practice, p. 359.

(c) 2nd August, 1877.

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*The Conveyancing and Law of Property Act, 1881.*

44 &amp; 45 VICT. c. 41. (a)

## I.—PRELIMINARY.

1. (1.) This Act may be cited as “The Conveyancing and Law of Property Act, 1881.” Short title; commencement; extent.

(2.) This Act shall commence and take effect from and immediately after the 31st December, 1881.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest: Interpretation of terms.

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land:

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income:

(iv.) Manor includes lordship, and reputed manor or lordship:

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incum-

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(a) For other sections of this Act, see *ante*, pp. 129, 171, 198, 216, 256.

brance, and includes every person intitled to the benefit of an incumbrance, or to require payment or discharge thereof :

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but sale means only a sale properly so called :

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings ; and a building lease is a lease for building purposes or purposes connected therewith :

(xi.) A mining lease is a lease for mining purposes ; that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

(xii.) Will includes codicil :

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament :

(xiv.) Securities include stocks, funds, and shares :

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy ; and bankrupt has a meaning corresponding with that of bankruptcy :

(xvi.) Writing includes print ; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print :

(xvii.) Person includes a corporation :

(xviii.) Her Majesty's High Court of Justice is referred to as the court.

## II.—SALES AND OTHER TRANSACTIONS.

### *Contracts for Sales.*

Application of  
stated conditions  
of sale to all  
purchases.

3. (1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a

contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same create a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, enrolment, or otherwise.

(4.) Where land sold is held by lease (not including underlease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates,

declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

Completion of  
contract after  
death.

4. (1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representative shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

#### *Discharge of Incumbrances on Sale.*

Provision by  
court for incum-  
brances, and sale  
freed therefrom.

5. (1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the court, or out of court, the court may, if it thinks fit, on the application of any party to

the sale, direct or allow payment into court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the court considers will be sufficient, by means of the dividend thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(3.) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

#### *General Words.*

6. (1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages, whatsoever appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

General words in conveyances of land, buildings, or manor.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever appertaining, or reputed to appertain to the land,

houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rents-charge, rents sec, rents of assize, fee farm rents, services, royalties, jurisdiction, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments, whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

#### *Covenants for Title.*

Certain covenants to be implied.

7. (1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, and the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say :

Conveyance.

(A.) In a conveyance for valuable consideration, other than a

mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

That, notwithstanding anything by the person who so conveys, or anyone through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any persons conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under anyone not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value ; and that, freed and discharged from or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under anyone through whom the person who so conveys derives title, otherwise than by purchase for value ; and further. that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter or conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under anyone through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request



and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required :

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

Conveyance  
of leaseholds.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That, notwithstanding anything by the person who so conveys, or anyone through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsundered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance :

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

Mortgage.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any



part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of exemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them, or any of them, shall be reasonably required:

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Mortgage of leaseholds.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed, all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part

of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred, or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

Settlement.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) :

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law on his death, will, from time to time, and at all times, from the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

Covenant by trustees, mortgagees, &c.

(F.) In any conveyance, the following covenant by every person who conveys, and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition or under an order of the court, which covenant shall be deemed to extend to every such person's own acts only (namely) :

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from so conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction ; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, so far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

#### *Execution of Purchase Deed.*

8. (1.) On a sale the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

Rights of purchaser as to execution.

(2.) This section applies only to sales made after the commencement of this Act.

#### *Production and Safe Custody of Title Deeds.*

9. (1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of

Acknowledgment of right to

production, and  
undertaking for  
safe custody of  
documents.

that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

- (i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production, or by anyone by him authorised in writing: and
- (ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and
- (iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those docu-

ments, or any of them, to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents, and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss, destruction of, or injury to the documents or any of them; and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such an order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall, by virtue of this Act, satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

#### X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44. (1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and

Remedies for recovery of annual sums charged on land.

without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

45. (1.) Where there is a quit-rent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the [Land] Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed. Redemption of quit-rents and other perpetual charges.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the commissioners.

(3.) On proof to the commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

## XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

49. (1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal. Use of word grant unnecessary.

(2.) This section applies to conveyances made before or after the commencement of this Act.

50. (1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person. Conveyance by person to himself, &c.

(2.) This section applies only to conveyances made after the commencement of this Act.

51 (1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in Words of limitation in fee or in tail.



the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

Powers simply collateral.

52. (1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Construction of supplemental or annexed deed.

53. (1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

Receipt in deed sufficient.

54. (1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, evidence for subsequent purchaser.

55. (1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, authority for payment to solicitor.

56. (1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt. (a)

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(a) This section only obviates the necessity of a special authority to the solicitor to receive the purchase money; and as trustees as a general rule were not before the Act justified in authorising their solicitors to receive purchase money, the section does not enable vendors who are trustees for sale to compel the purchaser to pay the purchase money to the vendors' solicitor on his producing a deed complying with the section: (*Re Bellamy and Metropolitan Board of Works*, 48 L. T. 801.)



(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

57. Deeds in the form of and using the expressions in the forms given in the fourth schedule to this Act (a) or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient. Sufficiency of forms in Fourth Schedule.

58. (1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed. Covenants to bind heirs, &c.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

59. (1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed. Covenants to extend to heirs, &c.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

60. (1.) A covenant and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves. Effect of covenant with two or more jointly.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

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(a) See *infra*.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of advance  
on joint account,  
&c.

61. (1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of ease-  
ments, &c., by  
way of use.

62. (1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

Provision for all  
the estate, &c.

63. (1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

64. In the construction of a covenant or proviso or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require. Construction of implied covenants.

### XIII.—LONG TERMS. (a)

65. (1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was not for less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn or other rent having no money value (b) originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided. Enlargement of residue of long term into fee simple.

(2.) Each of the following persons (namely):

- (i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;
- (ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;
- (iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from

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(a) And see sect. 11 of 45 & 46 Vict. c. 39, *post*.

(b) An annual rent of merely nominal amount, *e.g.*, three shillings, is not "a rent having no money value" within this section, even if it has not been regularly paid; those words meaning rather a rent which, when received, has no money value: (*Re Smith and Stott's Contract*, 48 L. T. 512.)

and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

#### XIV.—ADOPTION OF ACT.

Protection of  
solicitor and  
trustees adopting  
Act.

66. (1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transactions, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connection with any such contract or

transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

#### XV.—MISCELLANEOUS.

67. (1.) Any notice required or authorised by this Act to be served shall be in writing. Regulations  
respecting  
notice.

(2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the afore-said place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the court.

68. The Act described in Part II. of the first schedule to this Act shall, by virtue of this Act, have the short title of "The Short title of 5 &  
6 Will. 4 c. 62.

Statutory Declarations Act, 1835," and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

#### XVI.—COURT; PROCEDURE; ORDERS.

Regulations  
respecting pay-  
ments into court  
and application.

69.—(1.) All matters within the jurisdiction of the court under this Act shall, subject to the Acts regulating the court, be assigned to the Chancery Division of the court.

(2.) Payment of money into court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the court shall, except where it is otherwise expressed, be by summons at chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the court thinks fit.

(7.) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

[(8.)—(10.) As to Rules under the Act.]

Order of court  
conclusive.

70. (1.) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

#### THE FIRST SCHEDULE.

##### PART II. (a)

5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and

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(a) See sect. 68, *ante*, p. 289.

affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits " and to make other provisions for the abolition of unnecessary oaths.

[For Third Schedule, see *ante*, p. 225.]

THE FOURTH SCHEDULE.  
SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the                      day of                      18                      between A. of [§c.] of the one part and B. of [§c.] and C. of [§c.] of the other part WITNESSETH that in consideration of the sum of                      £ paid to A. by B. and C. out of money belonging to them on a joint account of which sum A. hereby acknowledges the receipt A. hereby covenants with B. and C. to pay to them on the                      day of                      18                      the sum of                      £ with interest thereon in the meantime at the rate of [four] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the                      day of                      and the                      day of                      AND THIS INDENTURE ALSO WITNESSETH that for the same consideration A. as beneficial owner hereby conveys to B. and C. All that [§c.] To hold to and to the use of B. and C. in fee simple subject to the proviso for redemption following (namely) that if A. or any person claiming under him shall on the                      day of                      18                      pay to B. and C. the sum of                      £ and interest thereon at the rate aforesaid then B. and C. or the persons claiming under them will at the request and cost of A. or the persons claiming under him reconvey the premises to A. or the persons claiming under him AND A. hereby covenants with B. as follows [*here add covenant as to fire insurance or other special covenants required*].

In witness, &c.

II.—*Further Charge.*

THIS INDENTURE made the                      day of                      18                      between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the                      day of                      18                      and made between the same parties for securing the sum of                      £ and interest at [four] per centum per annum on property at [§c.] WITNESSETH that in consideration of the further sum of                      £ paid to A. by B. and C. out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B. and C. of the sum of                      £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of                      £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the                      day of                      18                      between A. of [§c.] of the 1st part B. of [§c.] and C. of [§c.] of the 2nd part and M. of [§c.] of the 3rd part WHEREAS by an indenture dated [§c.] and made between [§c.] the lands hereinafter mentioned were conveyed by A. to B. and C. in fee simple by way of mortgage for securing                      £ and interest and by a supplemental indenture dated [§c.] and made between the same parties those lands were charged by A. with the payment to B. and C. of the further sum of                      £ and interest thereon AND WHEREAS a principal sum of                      £ remains due under the two before-mentioned indentures but all interest thereon has been paid as B. and C. hereby acknowledge Now



THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of A. to B. and C. and of the sum of £ paid to A. those two sums making together the total sum of £ paid by M. for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ B. and C. hereby acknowledge the receipt and of which total sum of £ A. hereby acknowledges the payment and receipt in manner before mentioned B. and C. as mortgagees and by the direction of A. as beneficial owner hereby convey and A. as beneficial owner hereby conveys and confirms to M. All that [&c.] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [Add, if required, And A. hereby acknowledges the right of M. to production of the documents of title mentioned in the schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof.]

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

#### IV.—*Marriage Settlement.*

THIS INDENTURE made the            day of            18    between John M. of [&c.] of the 1st part Jane S. of [&c.] of the 2nd part and X. of [&c.] and Y. of [&c.] of the 3rd part WITNESSETH that in consideration of the intended marriage between John M. and Jane S. John M. as settlor hereby conveys to X. and Y. All that [&c.] to hold to X. and Y. in fee simple to the use of John M. in fee simple until the marriage and after the marriage to the use of John M. during his life without impeachment of waste with remainder after his death to the use that Jane S. if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of X. and Y. for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of John M. and Jane S. successively according to seniority in tail male with remainder [insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of John M. and Jane S. in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of John M. in fee simple [Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired.]

In witness, &c.

### *The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39.

#### *Preliminary.*

Commencement. 1. (2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(4.) In this Act and in the Schedule thereto—



- (i.) Property includes real and personal property, and any debt and any thing in action, and any other right or interest in the nature of property, whether in possession or not :
- (ii.) Purchaser includes a lessee, or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser.

*Searches.*

2. (1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the first schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

Official negative and other certificates of searches for judgments, Crown debts, &c.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof ; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid the certificate, according to the tenure thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars ; and the person making any such requisition shall not be entitled to a search, or office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) [As to the making of general rules.]

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office ; and every such search may be made as if this section or any such rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds enrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory rule.

*Notice.*

Restriction on  
constructive  
notice.

3. (1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

*Executory Limitations.*

Restriction on  
executory  
limitations.

10. (1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default

or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

### *Long Terms.*

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not ; but not

Amendment of  
enactment  
respecting long  
terms.

(i.) Any term liable to be determined by re-entry for condition broken ; or

(ii.) Any term created by sub-demise out of a superior term ; itself incapable of being enlarged into a fee simple.

## REVERSIONARY INTERESTS.(a)

### *Sales of Reversions Act.*

31 VICT. c. 4.

1. No purchase made *bonâ fide*, and without fraud or unfair dealing, of any reversionary interest in real or personal estate, shall hereafter be opened or set aside merely on the ground of undervalue. (b)

## SETTLED ESTATES.

### *An Act for the Abolition of Fines and Recoveries and for the Substitution of more simple Modes of Assurance.*

3 & 4 WILL. 4, c. 74.

1. A "base fee" shall mean exclusively that estate in fee simple into which an estate tail is converted, where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred.

(a) As to dispositions by married women of reversionary interests in personalty, see 20 & 21 Vict. c. 57, *ante*, p. 196.

(b) The Act does not extend to unconscionable bargains for the sale of reversionary interests, wherein the distress of the reversioner is taken advantage of : (see *Bynon v. Cook*, 10 Ch. 389.)

Also see this section for the meaning in this Act of "lands," "estate," "estate tail," "money," "settlement," &c.

Abolition of fines and recoveries.

2. After the 31st of December, 1833, no fine shall be levied or common recovery suffered, except where the proceedings shall be commenced on or before that day.

3. After the 31st of December, 1833, persons liable to levy fines or suffer common recoveries under covenants or agreements entered into before that day, are to effect the purposes intended by a disposition under this Act.

14. Estates tail and estates expectant thereon are no longer to be barrable by warranties.

Power to dispose of entailed lands.

15. After the 31st of December, 1833, every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee simple, or for any less estate, the lands entailed, as against all persons claiming the same by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous Act would have been vested in or might have been claimed by the person making the disposition at the time of his making the same, and also against all persons, including the king, whose estates are to take effect after the determination, or in defeasance, of any such estate tail, saving the rights of all persons in respect of estates prior to the estate tail, and the rights of all other persons except those against whom such disposition is by this Act authorised to be made.

Exceptions.

18. The said power of disposition shall not extend to tenants of estates tail restrained by Act of Parliament from barring their estates tail, or to tenants in tail after possibility of issue extinct.

Power to enlarge base fee.

19. After the 31st of December, 1833, in every case in which an estate tail in any lands shall have been converted into a base fee, the person who, if such estate tail had not been barred, would have been actual tenant in tail, shall have power to dispose of such lands as against all persons, including the king, whose estates are to take effect after the determination, or in defeasance of the base fee, so as to enlarge the base fee into a fee simple, saving the rights, &c., as in sect. 15.

Expectants may not bar.

20. Nothing herein shall enable any person to dispose of lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein.

Limited dispositions.

21. If a tenant in tail shall make a disposition of the estate under this Act by mortgage or for any limited purpose, the same shall, to the extent of the estate thereby created, be an absolute bar in equity, as well as at law, to all persons as against whom the same is by this Act authorised to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected. *Proviso*: If

such estate, so created, shall be only an estate *pur autre vie*, or for years, or if, by a disposition under this Act, by a tenant in tail in lands, an interest, charge, lien, or incumbrance, shall be created, without a term of years or any greater estate for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, &c., notwithstanding any intention to the contrary, &c.

22. If at the time when there shall be a tenant in tail under a settlement, there shall be subsisting in the same lands or any of them under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, the person who shall be the owner of the prior estate, or the first of such prior estates, if more than one then subsisting under the same settlement, or would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being for all the purposes of this Act deemed the prior estate), shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate), although the same may have been charged or incumbered either by the owner thereof or by the settlor or otherwise howsoever; and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate; and although such prior estate may have been absolutely disposed of by the owner thereof, or in consequence of the bankruptcy of such owner, or by any other act or default of such owner; and that an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settlor, shall be deemed an estate under the same settlement, within the meaning of this clause.

23. Each of two or more owners of a prior estate shall be the sole protector as to his share.

24. Where a married woman would, if single, be protector, she and her husband together shall be protector; but if the prior estate be settled or agreed or directed to be settled to her separate use, she alone shall be the protector.

26. A lessee of a lease at a rent shall not in respect thereof be the protector.

27. No woman in respect of her dower, and (except in the case of a bare trustee under a settlement made on or before the 31st December, 1888), no bare trustee, heir, executor, adminis-

trator, or assign, shall, in respect of any estate taken by him as such, be protector.

32. A settlor entailing lands may appoint by the settlement any number of persons *in esse* not exceeding three to be protector. The deed of appointment, and every deed by which a protector shall relinquish his office, must be enrolled in [the Central Office] within six months after execution.

33. If any protector shall be lunatic, idiot, or of unsound mind, whether or not so found by inquisition, the Lord Chancellor or other person or persons entrusted with the care of persons found lunatic, &c., shall be protector.

If any protector shall be convicted of treason or felony, or, not being the owner of a prior estate under a settlement, shall be protector, and shall be an infant, or if it shall be uncertain whether such last-mentioned person be living or dead, the [Chancery Division] shall be protector.

If any settlor entailing shall in the same settlement declare that the person who, as owner of a prior estate thereunder, would be entitled to be protector, shall not be such protector, and shall not appoint any person to be protector, the court shall, as to the lands in which such prior estate shall be subsisting, be protector during the continuance thereof.

If in any other case where there shall be subsisting under a settlement an estate sufficient to qualify the owner to be protector, prior to an estate tail, and there shall at any time be no protector, as to the lands in which the prior estate shall be subsisting, the court shall, while there shall be no such protector and the prior estate shall be subsisting, be the protector.

Consent of protector necessary.

34. Where there shall be a protector his consent shall be requisite to enable an actual tenant in tail to create a larger estate than a base fee.

35. Where an estate tail shall have been converted into a base fee, and there shall be a protector, his consent shall be requisite to effect a disposition thereof.

36. Any means by which it shall be attempted to control the protector, or to prevent him using his absolute discretion in regard to his consent, and also any agreement entered into by him to withhold his consent, shall be void.

37. The rules of equity in relation to transactions between the donee and object of a power shall not apply as between the protector and a tenant in tail, as to the protector giving his consent to a disposition.

Avoidable estate how confirmed.

38. When a tenant in tail shall create a voidable estate in favour of a purchaser for value, and shall afterwards under this Act, by any assurance other than a lease not requiring enrolment, make a disposition of the same lands, or any of them, such disposition shall, if made with the consent of the protector (if one),

or by the tenant in tail alone if no protector, have the effect of confirming such voidable estate as against all persons except those whose rights are saved by this Act; but not as against a purchaser for value without notice.

39. If a base fee and the remainder or reversion in fee shall be united in the same person without any intermediate estate, the base fee shall not merge, but shall be enlarged into as large an estate as the tenant in tail, with the consent of the protector (if one), might have created by any disposition under this Act, if the remainder or reversion had been vested in any other person. Base fee not to merge.

40. Every disposition under this Act by a tenant in tail shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were a fee simple, and shall be made or evidenced by deed, and no disposition by a tenant in tail resting only in contract, with or without consideration, shall be of any force under this Act, notwithstanding such disposition shall be made or evidenced by deed. Dispositions, how to be made.

If the tenant in tail making the disposition be a married woman, the concurrence of her husband shall be necessary, and the deed shall be acknowledged by her.

41. Every disposition under this Act by a tenant in tail (except a lease for not exceeding twenty-one years, to commence not exceeding twelve calendar months from the date, at not less than five-sixths of a rack rent) shall be inoperative unless enrolled in [the Central Office] within six calendar months after execution. Leases by tenant in tail.

42. The consent of the protector shall be given either by the same assurance by which the disposition shall be effected, or by a distinct deed, to be executed at the same time, or before. Protector's consent, how given.

44. The protector may not revoke his consent.

45. A married woman, being protector, may give her consent as if she were a *feme sole*.

46. The consent of the protector if given by a distinct deed shall be void, unless the same be enrolled at the same time as, or before the disentailing assurance.

47. Equity shall be excluded from giving effect to dispositions by tenants in tail or consents of protectors which would not be effectual at law.

50. The previous clauses, so far as circumstances will admit, shall apply to copyholds, except that a legal estate tail therein shall be barred by surrender, and an equitable estate tail therein by surrender or deed, and except so far as such clauses are altered or varied by the clauses hereinafter contained. Copyholds.

51. If the consent of the protector to the disposition of entailed copyholds shall be given by deed, such deed shall, at or before the surrender, be executed by such protector and produced

to the lord of the manor or his steward or deputy, or otherwise such consent shall be void. The lord, steward, or deputy shall indorse the fact of production on the deed, and enter the deed and indorsement on the court rolls.

52. If such consent shall not be given by deed it shall be given to the person taking the surrender, and it shall be stated in the memorandum of surrender that such consent has been given.

53. Equitable estates tail may be disposed of by deed, and if the protector shall consent by a distinct deed, it must be executed at the time of, or before the execution of the disentailing deed, entered on the rolls, and indorsed with a memorandum of entry.

Every disposition of copyholds by an equitable tenant in tail shall be void as against a person claiming such lands for valuable consideration under a subsequent assurance entered on the rolls, unless the deed of disposition by the equitable tenant in tail be entered on the court rolls before the subsequent assurance.

54. A disentailing instrument of copyholds shall require no enrolment otherwise than by entry on the court rolls.

Constructive  
conversion.

71. Lands to be sold where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be entailed, and money subject to be invested in like manner shall, for the purposes of this Act, be treated as the lands to be purchased, and subject to the same estate. Any disposition of leaseholds for years under this clause, or money so circumstanced as aforesaid, shall be by assignment, by deed enrolled in [the Central Office] within six calendar months after execution.

73. Disentailing deeds need not be acknowledged before enrolment.

Priority of deed  
enrolled.

74. A deed enrolled is to have priority over a prior deed subsequently enrolled as between purchasers for value.

### *The Improvement of Land Act, 1864.*

27 & 28 VICT. c. 114.

"Improvement  
of land."

9. (a) By "the improvement of land" shall herein be meant all or any of the following matters:—

(1.) The drainage of land, and the straightening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land.

(2.) The irrigation and warping of land.

(3.) The embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams in a permanent manner.

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(a) See sect. 30 of 45 & 46 Vict. c. 38, *infra*.



- (4.) The inclosing of lands, and the straightening of fences and re-division of fields.
- (5.) The reclamation of land, including all operations necessary thereto.
- (6.) The making of permanent farm roads, and permanent tramways, and railways, and navigable canals for all purposes connected with the improvement of the estate.
- (7.) The clearing of land.
- (8.) The erection of labourers' cottages, farm houses, and other buildings required for farm purposes, and the improvements of and addition to labourers' cottages, farm-houses, and other buildings for farm purposes already erected, so as such improvements or additions be of a permanent nature.
- (9.) Planting for shelter.
- (10.) The construction or erecting of any engine-houses, water wheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, water-courses, bridges, weirs, sluices, flood-gates or hatches, which will increase the value of any lands for agricultural purposes.
- (11.) The construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure, and other articles, and things for agricultural purposes; provided that the commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof.
- (12.) The execution of all such works as in the judgment of the commissioners may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

10. The word "person" shall include companies and corporations.

11. Applications for borrowing or advancing money for the improvement of land must be made to the [Land] Commissioners: and, until sanctioned by them, may be withdrawn or altered, or consolidated with other applications, but without prejudice to liability for expenses incurred by the commissioners. Applications under Act.

12. Any two or more landowners may, with the consent of the commissioners, join in such an application, but the sum to be charged shall be apportioned so that a separate and distinct sum may be charged on the land of each landowner.

13. The commissioners may issue forms for proceedings under this Act, and—

14. Require security for expenses, and—

15. Cause the application to be investigated, and—

16. Require the proposed improvements to be altered.

19. Enactment in case any proposed improvement would interfere with a navigable river or canal.

20. In the case of church lands the consent of the patron and the bishop of the diocese must be obtained.

21. Power to the Chancery [Division] to hear and determine applications that may arise in respect of sects. 18 and 19.

24. The representatives of persons under disability shall have power to make applications, signify dissents, and take other proceedings under this Act.

Order of sanction.

26. Every order of sanction shall express the greatest sum to be charged in addition to costs, &c. (a), and the rate of interest and term of years for repayment, the former not exceeding 5 per cent. per annum, and the latter not exceeding twenty-five years. It shall also specify the lands in question, and shall either express or refer to some document expressing the general scheme.

22. Every order of sanction alone shall be called a provisional order.

28. Provision in case of death of landowner or determination of his interest before completion of improvements.

29. The commissioners may, with the consent of interested parties, sanction any modifications or alterations of the scheme or provisional order, but not so as to increase the sum to be charged, or extend or curtail the time for repayment.

30 and 31. As to the delivery of specifications to the commissioners, and their approval of the same.

Adjoining lands.

32. Persons interested in adjoining lands and being by the provisions of the "Lands Clauses Consolidation Act, 1845," enabled to sell and dispose thereof, or any estate or interest therein, may, for the purpose of any improvements authorised by this Act, sell and convey or grant to the landowner whose land has been or is proposed to be improved, such lands so adjoining or any part thereof or any easement or right affecting the same.

Execution of charge.

49. When the commissioners are satisfied that the improvements as sanctioned by them, or some part thereof, have been properly executed, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements if all the said improvements have been com-

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(a) See sect. 50.

pleted, or for a proportional part of such sum if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of adjoining lands or of any easement, authority, or right in or affecting the same, with interest thereon at the like rate.

50. The expenses of the application and contracts relating to the execution of the improvements, or to the advance of money for their execution, may be included by the commissioners in the charge.

51. Every charge under this Act shall be created by way of Nature of charge. rentcharge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof shall be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the commissioners. The charge shall be stamped as a mortgage, and shall be called an absolute order.

55. The execution of the absolute order by the commissioners shall be conclusive evidence in all courts and for all purposes of the validity of the charge thereby expressed to be made, and no inquiry shall be permitted either into the title or estate of the landowner, or into the due performance of anything required to be done by this Act.

56. A memorial of every absolute order shall be registered at the office of the land registry.

60. Every charge under this Act shall, as regards the holder thereof, be deemed to be personal property, except that any holder of such a charge, who shall desire to extinguish the same by re-uniting it to the land charged, shall have power for that purpose to direct by any deed that it shall be re-united to and merge in the beneficial interest in the said land as if it were of the same nature and tenure therewith; but all trustees, directors, and other persons who may be directed or authorised to invest any money on real security, shall (unless the contrary be provided by the instrument directing or authorising such investment) have power at their discretion to invest money in such charges or on mortgages thereof.

61. No charge on land made by any absolute order by virtue of this Act shall be deemed such an incumbrance as shall preclude a trustee of money, with power to invest the same in the purchase of land or on mortgage, from investing it in a purchase or upon a mortgage of the land so charged, unless the terms of his trust or power expressly provide that the land to be so purchased or taken in mortgage be not subject to any prior charge.

63. Every rentcharge on land by virtue of this Act may be recovered like a rentcharge in lieu of tithes under the Tithe Commutation Acts.

Recovery of rent-charge.

64. If any rentcharge payable under this Act shall be in arrear, such arrear shall not bear interest for a longer period than six months, but interest at five per cent. per annum in respect of the same for any period not exceeding six months may be recovered in the same manner as the sum in arrear: Provided that if, at the expiration of six months from the time of any payment falling into arrear, there shall not be upon the land charged a sufficient distress to satisfy the said payment and interest thereon for the said period of six months, together with the costs and charges of such distress, then the arrears of such payment shall continue to bear interest until payment or satisfaction, to be recovered in the same manner as the sum in arrear.

Assignment of rentcharge.

65. The grantee or other person for the time being entitled to any such rentcharge may assign the same by deed duly stamped, and wherein the consideration is truly stated; and such assignment may be in the form in schedule (C.) to the Act or to the like effect: and all such assignment shall be effectual to vest the charge thereby assigned, and all the powers, authorities, and rights thereunder, in the assignee; and notice thereof shall be sent to the commissioners.

Tenants for life, &c., to pay rent-charge.

66. Every landowner on whose land such a charge shall have been made, and every succeeding tenant for life, tenant in tail, and other person having a limited interest in such land, shall, as between himself and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments which shall become payable during the continuance of his interest, but shall not be liable to pay more than two years' arrears remaining unpaid at the time of his coming into possession, and may recover such arrears and costs occasioned by non-payment from the person who ought to have paid the same.

Apportionment.

67. A tenant may consent to become charged with the charge or with an apportioned part thereof, but otherwise shall be entitled to deduct the amount thereof from his rent.

68. If it would be desirable that a charge should be apportioned or a part of the land charged released therefrom, the same may be effected in manner in this section and in sect. 69 fully described.

70. Every charge apportioned or from which part of the lands have been released shall be deemed to be an original charge on such lands by absolute order.

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*The Limited Owners' Residences Act, 1870.*

33 &amp; 34 VICT. c. 56.

An Act to enable owners of settled estates to charge such estates, within certain limits, with the expense of building mansions as residences for themselves, and to be construed as one Act with the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114.)

*The Limited Owners' Residences Act (1870) Amendment Act, 1871.*

34 &amp; 35 VICT. c. 84.

2. Repeal of sects. 3 and 6 of the Limited Owners' Residences Act, 1870.

3. The erection or the improvement of a mansion-house and usual buildings appertaining thereto shall be improvements within the meaning of the Improvement of Land Act, 1864.

*The Settled Estates Act, 1877.*

40 &amp; 41 VICT. c. 18. (a)

2. The word "settlement" as used in this Act shall signify "Settlement" any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

The term "settled estates" as used in this Act shall signify "Settled estates." all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement; and for the purposes of this Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement.

In determining what are settled estates within the meaning of this Act, the court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

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(a) Repealing the 19 & 20 Vict. c. 120, and amending Acts. For the practice under this Act, see Haynes's Chancery Practice, p. 269.

"The court."

3. The expression "the court" in this Act shall, so far as relates to estates in England, mean the High Court of Justice, and all causes and matters in respect of such estates commenced or continued under this Act shall, subject to the provisions of the Judicature Acts, be assigned to the Chancery Division of the High Court of Justice in like manner as if such causes and matters had arisen under an Act of Parliament by which, prior to the passing of the Judicature Acts, exclusive jurisdiction in respect to such causes and matters had been given to the Court of Chancery, or to any judges or judge thereof respectively.

Power to the court to authorise leases.

4. The court may, if it shall deem it proper and consistent with a due regard for the interest of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, authorise leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed:

- (1.) Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease 21 years, and for a mining lease, or a lease of water mills, way leaves, water leaves, or other rights or easements, 40 years, and for a repairing lease 60 years, and for a building lease 99 years. *Proviso:* Any such lease (except an agricultural lease) may be for such term of years as the court shall direct, where the court shall be satisfied that it is the usual custom of the district, and beneficial to the inheritance, to grant such a lease for a longer term than the term hereinbefore specified in that behalf. (a)
- (2.) On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener without taking any fine or other benefit in the nature of a fine. *Proviso:* In the case of a mining lease, a repairing lease, or a building lease, a peppercorn rent, or any smaller rent than the rent to be ultimately made payable, may, if the court shall so direct, be made payable during all or any part of the first five years of the term.
- (3.) Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved

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(a) Leases have been authorised for very long terms where proved to be beneficial, and according to the custom of the locality, as for 600 years: (*Re Cross's Charity*, 27 Beav. 592) and 999 years (*Re Carr*, 9 W. R. 776.)

shall be from time to time set aside and invested as hereinafter mentioned; namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who, by reason of his estate, or by virtue of any declaration in the settlement, is entitled to work such earth, &c., for his own benefit, one-fourth part of such rent, and otherwise three-fourth parts thereof; and in every such lease sufficient provision shall be made to insure such application of the aforesaid portion of the rent by the appointment of trustees, or otherwise as the court shall deem expedient.

(4.) No such lease shall authorise the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the lease.

(5.) Every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.

5. Subject and in addition to the foregoing conditions every such lease shall contain such covenants, conditions, and stipulations as the court shall deem expedient with reference to the special circumstances of the demise. Special covenants.

6. The power to authorise leases, conferred by this Act, shall extend to authorise leases either of the whole or any parts of the settled estates, and may be exercised from time to time. Whole or part may be leased.

7. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorise leases shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease. Surrender and renewal.

8. The power to authorise leases shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases. Preliminary contracts.

9. The powers of leasing are to include powers to lords of settled manors to give licences to their copyhold or customary tenants to grant such leases. Copyholds.

10. The power to authorise leases may be exercised by the court, either by approving of particular leases, or by ordering that powers of leasing, in conformity with the provisions of this Act, shall be vested in trustees. How leases may be authorised.

11. When application is made to the court either to approve of a particular lease, or to vest any powers of leasing in trustees, the court shall require the applicant to produce such evidence as Evidence to be produced.

it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised.

Court to direct  
who to be lessor.

12. When a particular lease or contract for a lease has been approved by the court, the court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of execution absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the court shall direct.

Powers of  
leasing may be  
vested in  
trustees.

13. Where the court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest such power either in the existing trustees of the settlement or in any other persons, and such powers when exercised by such trustees shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the court shall direct; and in every such case the court may impose conditions as to consents or otherwise in the exercise of such power, and may authorise the insertion of provisions for the appointment of new trustees for the purpose of exercising such powers of leasing.

14. *Proviso*: In orders under this Act for vesting any powers of leasing no conditions shall be inserted requiring that the leases thereby authorised should be submitted to or be settled by the court or a judge, or be made conformable with a model lease deposited in the judge's chambers, unless the parties applying for the order desire to have any such condition inserted, or it shall appear to the court that there is some special reason therefor.

15. *Proviso*: In all cases of orders (whether under this Act or under the corresponding enactment of the Acts hereby repealed) in which any such condition as last aforesaid shall have been inserted, any party interested may apply to the court to alter and amend such order by striking out such condition. The order so altered shall have the same validity as if it had originally been made in its altered state; but it shall not be obligatory on the court to act under this provision in any case in which from any evidence it shall appear to the court that there is any special reason why in the case in question such a condition is necessary or expedient.

Court may  
authorise sales of  
settled estates  
and of timber.

16. The court may, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under



the settlement, and subject to the provisions of this Act, from time to time authorise a sale of the whole or any parts (a) of any settled estates or of any timber (not being ornamental timber) growing on any settled estates, and every such sale shall be conducted in the same manner as sales of lands under decree.

18. When land is sold for building, the court may, if it shall see fit, allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the court shall approve. Consideration for building land.

19. On a sale of land, any earth, coal, stone, or mineral may be excepted, and any rights or privileges reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the court may deem advisable. Minerals.

20. The court may, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions of this Act, direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to such purposes, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable. Court may authorise dedication for streets, roads, &c.

21. As to the laying out, making, executing, and maintaining such streets, roads, &c., and as to the expenses thereof.

22. On every such sale or dedication the court may direct who shall execute the conveyance, and the deed so executed shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication. Conveyance.

23. Any person entitled (b) to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment, would be entitled to such estates for a term of years determinable with any life or for an estate for any life or any greater estate, may apply to the court by petition to exercise the powers conferred by this Act. Application for exercise of powers of Act.

24. Subject to the exception hereinafter contained, every Consent to application.

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(a) The court may authorise a sale of minerals without the surface land (*Re Milward's Estate*, 6 Eq. 248.)

(b) I.e. beneficially entitled: (*Re Ives, Bailey v. Holmes*, 3 Ch. Div. 690.)

application to the court must be made with the concurrence or consent of the following parties, viz. :

Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail.

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

25. *Proviso:* Where an infant is tenant in tail under the settlement, the court may, if it shall think fit, dispense with the concurrence or consent of the person if only one, or all or any of the persons, if more than one, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant.

26. *Proviso:* Where, on an application under this Act, the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the court to which the application shall be made shall direct, requiring him to notify, within a time to be specified in such notice, whether he assents to or dissents from such application, or submits his rights or interests, so far as they may be affected by such application, to be dealt with by the court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice, and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the court.

27. *Proviso:* Where, on an application under this Act, the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the court that such notice as aforesaid cannot be given to such person without expenses disproportionate to the value of the subject-matter of the application, then, and in any such case, the court, if it shall think fit, either on the grounds of the rights or interests of such person being small or remote, or being similar to those of any other person or

persons, or on any other ground, may by order dispense with notice to such person, who shall thereupon be deemed to have submitted his rights and interests to be dealt with by the court.

28. An order may be made upon any application, notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused; but the court, in considering the application, shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom, or who submit or are to be deemed to submit their rights or interests to be dealt with by the court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

29. *Proviso*: The court may, if it shall think fit, give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the court, or whose rights, estate, or interest ought in the opinion of the court to be excepted.

30. Notice of any applications to the court under this Act shall be served on all trustees, who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who, in the opinion of the court, ought to be so served, unless the court shall think fit to dispense with such notice. Notice of application to be served on trustees.

31. Such notice shall be inserted in such newspapers (if any) as the court shall direct, and any person or body corporate, whether interested in the estate or not, may apply by motion for leave to be heard in opposition to or in support of any application to the court under this Act, and the court may permit such person or corporation to appear and be heard on such terms as it shall think fit. Any person apply to be heard.

32. The court shall not grant any application under this Act where a similar application has been rejected by Parliament.

33. The court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or otherwise recorded in any way it may think proper in all cases where it shall appear to the court to be practicable and expedient for preventing fraud or mistake. Notice of exercise of powers.

34. All money to be received on any sale under this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the court shall think fit, be paid to any trustees of whom it shall approve, Application of moneys.

or otherwise, the same, as far as relates to estates in England, shall be paid into court *ex parte* the applicant in the matter of this Act; and such money shall be applied, as the court shall from time to time direct, to some one or more of the following purposes, viz.:—

So far as relates to estates in England, the purchase or redemption of the land tax;

The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase or other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

35. The application of the money as aforesaid may, if the court shall so direct, be made by the trustees (if any) without application to the court, or otherwise, upon an order of the court upon the petition of the person who would be entitled to the possession or receipt of the rents and profits if the money had been invested in the purchase of land.

36. Until the money can be applied as aforesaid, the same shall be invested as the court shall direct in some or one of the investments in which cash under the control of the court is for the time being authorised to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

37. Where any purchase-money paid into court under the provisions of this Act shall have been paid in respect of any lease for a life or lives for years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or for any reversion dependant on any such lease or estate, the court may, on the petition of any party interested in such money order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court may  
exercise powers  
repeatedly.

38. The court may repeatedly exercise any of the powers conferred on it by this Act, but not if expressly negatived by the settlement. *Proviso:* The circumstance of the settlement containing powers to effect similar purposes shall not preclude the court from exercising any of the powers conferred by this Act, if it shall think that the powers of the settlement ought to be extended.

39. Nothing in this Act shall be construed to empower the court to authorise any lease, sale, or other act beyond the extent to which, in the opinion of the court, the same might have been authorised in and by the settlement by the settlor or settlors. Limitation of power of court.

40. After the completion of any lease or sale, or other act under the authority of the court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the court was not hereby empowered to authorise the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to have been obtained. Acts under authority of court not to be invalidated.

41. The court may order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments the subject of the application or other hereditaments in the same settlement; and may direct that such costs be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the court shall direct. Costs.

42. Power to certain judges to make rules and orders for carrying into effect the purposes of this Act. Rules.

43. Such rules and orders are to be laid before Parliament.

44. As to the jurisdiction of the Court of Chancery of the County Palatine of Lancaster under this Act.

46. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for any life or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the curtesy, or in dower, or in right of a wife who is seised in fee, without any application to the court, may demise the same or any part thereof, except the principal mansion house and the demesnes thereof and other lands usually occupied therewith, from time to time, not exceeding twenty-one years, so far as relates to estates in England, to take effect in possession at or within one year next after the making thereof: Provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion: and Provided that such demise be not made without impeachment of waste, and do contain a Leases by tenants for life.

covenant for payment of the rent and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment of the rent for twenty-eight days after it becomes due, or for some less period, to be specified in that behalf: and Provided a counterpart of every lease be executed by the lessee.

47. Every demise authorised by sect. 46 shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement, if the estates be settled, and in case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Execution of  
counterpart.

48. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Infants, lunatics,  
&c.

49. All powers given by this Act and all applications to the court under this Act, and consents to and notices respecting such applications may be executed, made, or given by, and all notices under this Act, may be given to guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents. *Proviso:* In the cases of infant or lunatic tenants in tail, no application to the court or consent to or notification respecting any application, may be made or given by any guardian or committee, without the special direction of the court.

Married women.

50. Where a married woman shall apply to the court, or consent to an application under this Act, she shall be first examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application, and such examination shall be made whether the hereditaments are settled to her separate use or not; and no clause or provision in any settlement restraining anticipation shall prevent the court from exercising, if it shall think fit, any of the powers of this Act, and no such exercise shall occasion forfeiture.

51. Such examination, if the married woman be resident within the jurisdiction of the court, shall be made either by the court or by some solicitor duly appointed by the court, who shall certify that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same. When she is resident out of the jurisdiction, any person, whether a solicitor or not, may be so appointed, and

must certify as aforesaid. The appointment of a person not a solicitor shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction.

52. Subject to such examination, married women may make or consent to any applications, whether they be of full age or infants.

53. Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the court, or to exercise any power. Act not obligatory.

54. For the purposes of this Act a person shall be deemed to be entitled to possession or receipt of the rent and profits, although his estate may be charged or incumbered either by himself or by the settlor or otherwise, but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to possession, &c., unless they shall concur therein. Persons deemed entitled notwithstanding incumbrances.

55. This Act shall not authorise a sale or lease beyond twenty-one years of any settled estates in which by any Act of Parliament tenants in tail are restrained from barring their estates, or where the reversion is vested in the Crown. Parliamentary entails.

56. This Act shall not authorise a lease of copyholds not warranted by the custom of the manor, without the consent of the lord : nor otherwise prejudice his rights. Copyholds.

57. This Act shall, except as hereinafter provided, apply to all matters existing at the time of the passing of this Act, whether proceedings are actually pending or not, and any proceedings in any such matter may be continued or taken under this Act as if it originated hereunder, or may be continued or taken under the Acts hereby repealed, or partly under this Act and partly under them as occasion may require. *Proviso:* The provisions in this Act contained respecting demises to be made without application to the court, shall extend only to settlements made after the 1st of November, 1856. To what matters and settlements Act applies.

61. This Act shall commence on the 1st day of November, 1877. Commencement.

### *The Settled Land Act, 1882.*

45 & 46 VICT. c. 38.

#### I.—PRELIMINARY.

1. (1.) This Act may be cited as "The Settled Land Act, 1882." Short title; commencement; extent.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the 31st December, 1882.

(3.) This Act does not extend to Scotland.



## II.—DEFINITIONS.

Definition of  
settlement,  
tenant for life,  
&c.

2. (1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person, who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement. (a)

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

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(a) Where a tenant for life in possession of a settled estate entered into an agreement to grant a building lease under a power contained in the settlement, but died before the lease was executed, and the power of leasing thereupon became vested in the trustees of the settlement, who declined to execute a lease, it was held that the agreement entered into by the tenant for life being one which would have been binding upon him had he lived was also binding on all persons claiming under the settlement, and therefore one which the trustees were bound to carry into effect: (*Davis v. Harford*, 47 L. T. 540.)



(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land ; income includes rents and profits ; and possession includes receipt of income :

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise ; and, in relation to rent, payment includes delivery ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings ; and a building lease is a lease for any building purposes or purposes connected therewith :

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working ; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purpose ; and a mining lease is a lease for any mining purpose or purposes connected therewith, and includes a grant or licence for any mining purposes :

(v.) Manor includes lordship, and reputed manor or lordship :

(vi.) Steward includes deputy steward, or other proper officer, of a manor :

(vii.) Will includes codicil and other testamentary instrument, and a writing in the nature of a will :

(viii.) Securities include stocks, funds, and shares :

(ix.) Her Majesty's High Court of Justice is referred to as the Court :

(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners :

(xi.) Person includes corporation.

## III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

*General Powers and Regulations.*

Powers to tenant  
for life to sell,  
&c.

## 3. A tenant for life—

- (i.) May sell the settled land, or any part thereof (*a*), or any easement, right, or privilege of any kind, over or in relation to the same; and
- (ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and
- (iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (iv.) Where the settlement comprises an undivided share in land or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Regulations  
respecting sale,  
enfranchisement,  
exchange, and  
partition.

4. (1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained. (*b*)

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition,

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(*a*) See, however, sect. 15.

(*b*) Where the remainderman offers to buy the estate at its full value, he is entitled to an injunction restraining the tenant for life from selling at a less price than that offered by the remainderman, or from selling to any person other than the remainderman without giving him a reasonable opportunity of purchasing at a higher price than may be offered by any other bidder: (*Wheelwright v. Walker*, 48 L. T. 867; 52 L. J. 274, Ch.)

or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

### *Special Powers.*

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

Transfer of  
incumbrances on  
land sold, &c.

## IV.—LEASES.

### *General Powers and Regulations.*

6. A tenant for life may lease the settled land, or any part thereof (a), or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding (b)—

Power for tenant  
for life to lease  
for ordinary or  
building or  
mining purposes.

(i.) In case of a building lease, ninety-nine years;

(ii.) In case of a mining lease, sixty years;

(iii.) In case of any other lease, twenty-one years.

7. (1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

Regulations  
respecting leases  
generally.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(a) See, however, sect. 15.

(b) See, however, sect. 10.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

*Building and Mining Leases.*

Regulations  
respecting  
building leases

8. (1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connection with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations  
respecting  
mining leases.

9. (1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connection with mining purposes.

10. (1.) Where it is shown to the court with respect to the district in which any settled land is situate, either—

Variation of building or lease according to circumstances of district.

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity ; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity :

the court may, if it thinks fit, authorise generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured, by condition of re-entry, or otherwise, as in the order of the court expressed, or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Part of mining rent to be set aside.

### *Special Powers.*

12. The leasing power of a tenant for life extends to the making of—

Leasing powers for special objects.

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title ; and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land ; and

- (iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act or otherwise, as the case may require.

*Surrenders.*

Surrender and  
new grant of  
leases.

13. (1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

*Copyholds.*

Power to grant to  
copyholders  
licences for  
leasing.

14. (1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

## V.—SALES, LEASES, AND OTHER DISPOSITIONS.

*Mansion and Park.*

15. Notwithstanding anything in this Act, the principal mansion-house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the court.

*Restriction as to mansion house, park, &c.*

*Streets and Open Spaces.*

16. On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof—

*Dedication for streets, open spaces, &c.*

- (i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connection therewith; and
- (ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be enrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

*Surface and Minerals apart.*

17. (1.) A sale, exchange, partition, or mining lease may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining

*Separate dealing with surface and minerals, with or without wayleaves, &c.*

purposes in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

#### *Mortgage.*

Mortgage for equality money, &c.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

#### *Undivided Share.*

Concurrence in exercise of powers as to undivided share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

#### *Conveyance.*

Completion of sale, lease, &c., by conveyance.

20. (1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (i.) All estates, interests, and charges having priority to the settlement; and
- (ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
- (iii.) All leases and grants at fee-farm rents or otherwise, and



all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

#### VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

Capital money under Act; investment, &c., by trustees or court.

(i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit-rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorised by this Act:

- (iv.) In payment for equality of exchange or partition of settled land :
- (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land :
- (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life :
- (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land :
- (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes :
- (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge :
- (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act :
- (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations  
respecting  
investment,  
devolution, and  
income of  
securities, &c.

22. (1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement ; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during

the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner, and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorises the same. Investment in land in England.

24. (1.) Land acquired by purchase or in exchange, or on partition shall be made subject to the settlement in manner directed in this section. Settlement of land purchased, taken in exchange, &c.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land required as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled

land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

## VII.—IMPROVEMENTS.

### *Improvements with Capital Trust Money.*

Description of  
improvements  
authorised by  
Act.

25. Improvements authorised by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses :
- (ii.) Irrigation ; warping :
- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure :
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water :
- (v.) Groynes ; sea walls ; defences against water :
- (vi.) Inclosing ; straightening of fences ; re-division of fields :
- (vii.) Reclamation ; dry warping :
- (viii.) Farm roads ; private roads ; roads or streets in villages or towns :
- (ix.) Clearing ; trenching ; planting :
- (x.) Cottages for labourers, farm servants, and artisans, employed on the settled land or not :
- (xi.) Farmhouses, offices, and outbuildings, and other buildings for farm purposes :
- (xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise :
- (xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells,

ponds, shafts, dams, weirs, sluices, and other works and machinery, for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption :

(xiv.) Tramways ; railways ; canals ; docks :

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes :

(xvi.) Markets and market-places :

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land :

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid :

(xix.) Trial pit for mines, and other preliminary works necessary or proper in connection with development of mines :

(xx.) Reconstruction, enlargement, or improvement of any of those works.

26. (1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

Approval by  
Land Commis-  
sioners of scheme  
for improvement  
and payment  
thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof ; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the commissioners, or by the court, which certificate shall be conclusive as aforesaid ; or on

(iii.) An order of the court directing or authorising the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in court, then, after a scheme is approved by the court, the court may, if it thinks fit, on a report or certificate of the commissioners, or of a competent engineer or able practical surveyor, approved by the court, or on such other evidence as the court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in  
improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Act, or in contributing to the cost thereof.

Obligation on  
tenant for life  
and successors to  
maintain,  
insure, &c.

28. (1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the

tenant for life ; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

*Execution and Repair of Improvements.*

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorised by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Protection as regards waste in execution and repair of improvements.

*Improvement of Land Act, 1864.*

30. The enumeration of improvements contained in section 9 (a) of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorised by this Act.

Extension of 27 & 28 Vict. c. 114, s. 9.

VIII.—CONTRACTS.

31. (1.) A tenant for life—

- (i.) May contract to make any sale, exchange, partition, mortgage, or charge ; and
- (ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act ; and any such consideration, if paid in money, shall be capital money arising under this Act ; and
- (iii.) May contract to make any lease ; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act ; and
- (iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease ; and thereupon may make

Power for tenant for life to enter into contracts.

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(a) See *ante*, p. 300.

a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

#### IX.—MISCELLANEOUS PROVISIONS.

Application of money in court under Lands Clauses and other Acts—8 & 9 Vict. c. 18—23 & 24 Vict. c. 106—32 & 33 Vict. c. 18—40 & 41 Vict. c. 18.

32. Where, under an Act incorporating, or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in court, or is afterwards paid into court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the Act under which the money is in court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in court.

Application of money in hands of trustees under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for



life, invest or apply the same as capital money arising under this Act.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the court, as the case may be, and in the case of the court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Application of money paid for lease or reversion.

35. (1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the court, may cut and sell that timber, or any part thereof.

Cutting and sale of timber, and part of proceeds to be set aside.

(2.) Three-fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

36. The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Proceedings for protection or recovery of land settled or claimed as settled.

37. (1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

Heirlooms.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the court.

#### **XI.—COURT; LAND COMMISSIONERS; PROCEDURE.**

Regulations  
respecting pay-  
ments into court,  
applications, &c.

46. (1.) All matters within the jurisdiction of the court under this Act shall, subject to the Acts regulating the court, be assigned to the Chancery Division of the court.

(2.) Payment of money into court effectually exonerates therefrom the person making the payment.

(3.) Every application to the court shall be by petition, or by summons at chambers.

(4.) On an application by the trustees of a settlement, notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the court thinks fit.

(6.) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(8.) The powers of the court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine.

(10.) The powers of the court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the court, or from which the capital money to be dealt with in the court arises under this Act, or in connection with which the personal chattels to be dealt with in the court are settled.

Payment of costs  
out of settled  
property.

47. Where the court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same

settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the court directs, and either by conveyance of the fee simple or other estate or interest the subject of settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the court thinks fit.

48. [As to Constitution and Powers of the Land Commissioners. (a)]

49. (1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office. Filing of certificates, &c., of commissioners.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

## XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement. Powers not assignable; contract not to exercise powers void.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after, and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

51. (1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and Prohibition or limitation against exercise of powers void.

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(a) These consist of the former Inclosure, Copyhold, and Tithe Commissioners respectively: (sect. 48.)

partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision  
against for-  
feiture.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Tenant for life  
trustee for all  
parties inter-  
ested.

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protec-  
tion of pur-  
chasers, &c.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Exercise of  
powers; limita-  
tion of provi-  
sions, &c.

55. (1.) Powers and authorities conferred by this Act on a tenant for life, or trustees, or the court, or the Land Commissioners, are exercisable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only

(unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leaseings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

56. (1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative. (a) Saving for other powers.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts, or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act. (b)

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

57. (1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act. Additional or larger powers by settlement.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

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(a) The proper principle of construction to be applied to this Act is that it was intended thereby to give to a tenant for life enlarged powers to be exercised for his own benefit. The meaning of this sub-section is not to take away from the trustees named in a settlement any power given to them by the settlement, but to provide that if the powers of the Act are more extensive than those of the settlement, the powers of the Act may be exercised in the manner prescribed by the Act: (*Re The Duke of Newcastle's Settled Estates*, 48 L. T. 779; 52 L. J. 645, Ch.)

(b) The meaning of this sub-section is that in all cases, notwithstanding anything contained in the settlement, the consent of the tenant for life shall by virtue of the Act be necessary to the exercise by the trustees of the settlement of any power conferred by the settlement for any purpose provided by the Act: (*Id.*)

## XIII.—LIMITED OWNERS GENERALLY.

Enumeration of  
other limited  
owners, to have  
powers of tenant  
for life.

58 (1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:
- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:
- (v.) A tenant for the life of another, not holding merely under a lease at a rent:
- (vi.) A tenant for his own or any other life, or for years determinable on life whose estate is liable to cease in any event during that life, either by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:
- (vii.) A tenant in tail after possibility of issue extinct:
- (viii.) A tenant by the curtesy:
- (ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

## XIV.—INFANTS, MARRIED WOMEN, LUNATICS.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof. Infant absolutely entitled to be as tenant for life.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders. (a) Tenant for life, infant.

61. (1.) The foregoing provisions of this Act do not apply in the case of a married woman. Married woman, how to be affected.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person entrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of Tenant for life, lunatic.

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(a) The meaning of this section is that, where the tenant for life is an infant, the option of consenting given to the tenant for life is conferred upon the trustees of the settlement: (*Re The Duke of Newcastle's Settled Estates*, 40 L. T. 779; 52 L. J. 645, Ch.)



lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

#### XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

Provision for  
case of trust to  
sell and re-invest  
in land.

63. (1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purposes, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).



- (ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.
- (iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not, for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interest, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.
- (iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power or appointment of charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

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## SHEEP AND CATTLE.

### *Sheep and Cattle Act.*

28 & 29 VICT. c. 60.

By this Act the owner of every dog shall be liable in Injury by dog. damages for injury done to any cattle(a) or sheep by his dog,

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(a) Horses are included under the word "cattle" in sect. 1: (*Wright v. Pearson*, 9 Bar. Rep. 849.)

and it shall not be necessary for the plaintiff to show a mischievous propensity in such dog, or the owner's knowledge thereof, or that the injury was attributable to neglect on the part of the owner. Where the amount claimed does not exceed 5*l.* it shall be recoverable before a justice or justices in petty sessions. The occupier of the premises where the dog is kept shall be deemed *prima facie* to be the owner.

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## SOLICITORS.

*An Act for consolidating and amending several of the Laws relating to Solicitors practising in England and Wales.*

6 & 7 VICT. c. 73.

### Qualifications.

2. No person shall act as a solicitor unless admitted and enrolled and duly qualified at the time of his so acting.

3. Except as in this Act mentioned, no person shall be admitted a solicitor unless he shall have served a clerkship of five years, and shall have been duly admitted and sworn.

### Articled clerks.

4. No solicitor shall have more than two articled clerks at one time, or shall take or retain an articled clerk after discontinuing business, or whilst clerk to another solicitor.

### Where solicitor bankrupt.

5. In case any solicitor shall become bankrupt, any court wherein he is admitted may, on the application of an articled clerk, direct the articles to be discharged or assigned as the court shall think fit.

### Service with barrister, &c.

6. Clerks articled for five years may, by permission of the solicitor to whom articled, serve one year with a barrister or special pleader and one year with the London agent of such solicitor. (a)

### Affidavit of admission.

8. The solicitor shall, within six months from the date of the articles, make or cause to be made an affidavit of his having been duly admitted, and also of the actual execution of the articles by him, and by the person bound as clerk, and in every such affidavit shall be specified the names of every such solicitor and person so bound and their places of abode respectively, together with the day of execution of the articles, and such affidavit shall be filed with and by the officer appointed or to be appointed for that purpose within six months next after execution of the articles, and such officer shall thereupon enrol and register the articles.

9. If such affidavit be not filed within six months, the service of the clerk shall be reckoned to commence from the day of filing the same, unless a court of law or equity shall otherwise order.

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(a) See 23 & 24 Vict. c. 127, s. 6, *post*, p. 346.

10. No person shall be admitted a solicitor before such affidavit shall have been produced to the court or judge, to whom such person shall apply to be admitted, unless such court or judge be satisfied that the same cannot be produced and dispense with the production.

12. Articled clerks shall, during the whole term of service, continue and be actually employed by the solicitor to whom articulated in his proper business, practice, or employment of a solicitor, except as mentioned in sect. 6. (a) Employment of articulated clerks.

13. In case the solicitor to whom the clerk is articulated shall die or leave off practice, the clerk may enter into fresh articles with another solicitor for the rest of the term. Fresh articles.

14. An articulated clerk, before being admitted, shall make an affidavit of service. Affidavit of service.

26. Persons practising as solicitors without a stamped certificate which shall then be in force shall be incapable of recovering fees. (b) Practising without certificate.

28. No person who shall have duly served his clerkship pursuant to this Act shall be prevented from being admitted, nor liable to be struck off the roll, if admitted, by reason of the solicitor to whom he may have been bound having been after such service struck off the roll, provided that such clerk be otherwise entitled to be admitted. Where solicitor struck off roll.

29. Application for striking persons off the roll for defect in articles, registry, service, or admission and enrolment shall be made within twelve months from the time of admission, provided that such articles, registration, service, admission, or enrolment be without fraud. Striking off for defect in articles, &c.

31. No solicitor being a prisoner shall or may during his confinement, as a solicitor, in his own name or in the name of any other solicitor, commence or prosecute or defend any action or matter in bankruptcy. Solicitors acting contrary to this section shall be guilty of contempt of court, and be unable to recover fees in respect of such business. Imprisonment of solicitor.

32. A solicitor wilfully and knowingly acting as agent in any action or suit or matter in bankruptcy, for any person not duly qualified to act as a solicitor, or permitting his name to be used upon the account or for the profit of, or doing any other act to enable such person to appear, act, or practise as a solicitor in any action, shall and may be struck off the rolls, and such unqualified person shall and may be imprisoned for not more than a year. Solicitor not to act as agent for unqualified persons.

37. No solicitor, nor any executor, administrator, or assignee of any solicitor shall commence or maintain any action or suit Solicitors not to commence action for fees

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(a) See, however, 37 & 38 Vict. c. 68, ss. 4-6, *post*, pp. 349, 350.

(b) And see 37 & 38 Vict. c. 68. s. 12, *post*, 351.

till one month  
after delivery of  
signed bill.

for the recovery of any fees, charges, or disbursements for any business done by such solicitor, until the expiration of one month after such solicitor, or executor, administrator, or assignee shall have delivered unto the party to be charged therewith, or sent by the post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such fees, charges, and disbursements, and which bill shall either be subscribed by such solicitor (or in the case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or by such executor, administrator, or assignee, or be inclosed in or accompanied by a letter subscribed in like manner referring to such bill; and upon the application of the party chargeable by such bill within such month, it shall be lawful, in case the business contained in such bill or any part thereof shall have been transacted in the [Chancery Division], or in any other court of equity, or in any matter of bankruptcy or lunacy, or in case no part of such business shall have been transacted in any court of law or equity, for the Lord Chancellor or the Master of the Rolls, and in case any part of such business shall have been transacted in any other court, for the [Queen's Bench Division] or any judge thereof, and they are hereby required, to refer such bill and the demand of such executor, administrator, or assignee to be taxed and settled by the proper officer of the court, and in the meantime proceedings shall be restrained.

In case such application shall not be made within the month, such reference may be made either upon the application of the solicitor, or the executor, &c., or upon the application of the party chargeable subject to such conditions as the court or judge making such reference shall think proper, and the solicitor, or his executor, administrator, or assignee may be restrained from proceeding in the meantime on such terms as shall be thought proper.

Provided that no such reference shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of such solicitor, or his executor, administrator, or assignee, or after the expiration of twelve months after such bill shall have been delivered, except under special circumstances to be proved to the satisfaction of the court or judge to whom such application shall be made, and upon such reference, if either party having due notice shall refuse or neglect to attend such taxation, the bill may be taxed *ex parte*, and in case the party chargeable with such bill shall attend upon taxation, the costs thereof shall, except as hereinafter provided, be paid as follows: If the bill when taxed be less by a sixth part than when delivered, such solicitor, or his executor, administrator,

or assignee shall pay such costs, and if not, then the party chargeable with such bill making such application or so attending shall pay such costs.

The taxing officer may certify any special circumstances (a), and thereupon or when a reference shall have been obtained under special circumstances, the court or a judge may make any such order as to payment of costs of taxation as may be thought right.

The court or a judge may order a solicitor, or his executor, administrator, or assignee to deliver a bill, and deliver up deeds and documents touching the same.

A solicitor, or his executor, administrator, or assignee, need not in the first instance prove the contents of the bill delivered, but must prove that a bill of fees, charges, or disbursements was duly subscribed and delivered as aforesaid, but the other party may show that the bill did not constitute a *bond fide* compliance with this Act.

38. Where any person not the party chargeable shall be liable to pay or shall have paid such bill, he may make application for taxation in the same manner as the party chargeable, provided that in case application shall be made when, under the provisions herein contained, a reference is not authorised except under special circumstances, the court or a judge may take into consideration any additional special circumstances applicable to the applicant, although not applicable to the party chargeable if he had made the application.

Bills may be taxed on application of third parties.

39. When a trustee, executor, or administrator becomes chargeable with any such bill, the Lord Chancellor or Master of the Rolls may, on the application of a party interested in the property out of which such trustee, &c., may have paid or be entitled to pay such bill, refer the same to taxation, subject to such conditions as such judge shall think fit. Provided that if the solicitor, or his executor, administrator, or assignee, shall be ordered to pay any money, such judge may order the same to be paid to such trustee, &c., instead of to the applicant, and if the applicant shall pay money to such solicitor, or his executor, administrator, or assignee, in respect of such bill, he shall be repaid by such trustee, &c.

Taxation of bills chargeable on executors, &c.

40. On an application for taxation by other persons than the party chargeable, the court or a judge may order the solicitor, or his executor, administrator, or assignee, to deliver a copy of the bill to the applicant on payment of the costs for the same. No bill shall be re-taxed unless directed by the court or a judge under special circumstances.

Copy of bill to be delivered.

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(a) Charges *prima facie*, and in the absence of explanation excessive, may constitute such a special circumstance: (*Re Robinson*, 17 L. T. 179.)

Taxation after  
payment.

41. A bill may be taxed within twelve months after payment if in the opinion of the court or a judge the special circumstances of the case so require, and subject to such conditions as to the court or judge shall seem right.

*An Act to amend the Laws relating to Solicitors, Proctors,  
and Certificated Conveyancers.*

23 & 24 VICT. c. 127.

Graduates.

2. Certain graduates as in this section mentioned may be admitted after three years' service, and after being examined and sworn.

Barristers.

3. Barristers may be admitted after three years' service, and after being examined and sworn.

Ten year clerks.

4. Persons having been for ten years *bond fide* clerks to solicitors, or proctors, may be admitted after three years' service, and after being examined and sworn.

Four years'  
service.

5. The Chief Justice and Master of the Rolls may make regulations that persons who have passed examinations in certain universities before articles may be admitted after four years' service.

6. Sect. 6 of 6 & 7 Vict. c. 73 (a), extended to clerks articled for four years only.

Articles to be  
registered.

7. Articles of clerkship and any assignment thereof shall be produced to the registrar of [solicitors] within three months from enrolment, and a fee of five shillings paid, and if not so produced the service shall commence from the date of production, unless a judge's order shall be obtained to the contrary, notice of the application for which shall be given to the registrar.

Employment of  
articled clerks.

10. No articled clerk shall hold any office or engage in any employment whatsoever other than the employment of clerk to the solicitor to whom articled, and his partner or partners, if any, in the business, practice, or employment of a solicitor, save as by the 6 & 7 Vict. c. 73, or this Act, otherwise provided, and every articled clerk shall, before admission, prove by the affidavit required by the 6 & 7 Vict. c. 73, s. 14, that he has held no office and engaged in no employment contrary to this enactment. (b)

Where service  
expires in  
vacation.

12. Where the term of service expires in any vacation, the [final] examination may be passed in the preceding term.

Penalty for  
wrongfully act-  
ing as solicitor.

26. Persons acting contrary to the 6 & 7 Vict. c. 73, s. 2, shall be guilty of contempt, unable to recover fees, and liable to forfeit 50*l.* for every offence, to be recovered in a superior or County

(a) See *ante*, p. 342.

(b) See, however, 37 & 38 Vict. c. 68, ss. 4-6, *post*, pp. 344, 350.

Court, with the sanction of the Attorney-General, and in the name of the Incorporated Law Society.

28. Power to courts of justice to charge property recovered by a solicitor on behalf of a client with the payment of the costs. Charge on property recovered.

### *The Solicitors Act, 1870.*

33 & 34 VICT. c. 28.

#### PART I.—*Agreements between Solicitors and their Clients.*

4. A solicitor may make an agreement in writing (a) with this client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements, in respect of business done or to be done by such solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise subject to the provisions in this part of the Act contained. *Proviso*: When any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the same; and if it shall appear to such officer that the agreement is not fair and reasonable, he may require the opinion of a court or judge to be taken thereon by motion or petition, and such court or judge shall have power to reduce the amount or cancel the agreement, and order the costs to be taxed as if no agreement had been made. Remuneration may be fixed by agreement.

5. Such agreement shall not affect the amount of or the rights or remedies for the recovery of any costs recoverable from the client by any other person, or payable to the client by any other person. Provided that the client who has entered into such agreement shall not be entitled to recover under order for payment of any costs which are the subject of such agreement more than the amount payable by the client to his own solicitor under the same. Saving of interests of third parties.

6. Such agreement shall exclude any further claim of the solicitor in respect of charges, &c., in relation to the conduct and completion of the business in reference to which the agreement is made, except such (if any) as are expressly excepted by the agreement. Agreements to exclude further claims.

7. A provision in such agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from the ordinary responsibility of a solicitor, shall be void. Negligence.

8. No action or suit shall be brought upon any such agree- Examination and enforcement of agreements.

(a) The agreement must be signed by both parties: (*Re Raven*; *Ex parte Pitt*, 45 L. T. 742.)



ment, but questions affecting the same may be examined and determined, and the agreement enforced or set aside on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, &c., in respect of which the agreement is made, by the court in which the business or any part thereof was done, or a judge thereof, or if not done in any court then where the amount payable under the agreement exceeds 50*l.* by any superior court of law or equity, or a judge thereof, and if not exceeding 50*l.* by the judge of a County Court which would have jurisdiction in an action upon the agreement.

Setting aside  
agreements.

9. Such court or judge may enforce such agreement if it shall appear fair and reasonable; but if otherwise, may declare the same to be void, order it to be cancelled, and the costs to be taxed, as if no agreement had been made, and make an order as to the costs of the application.

Re-opening  
agreements after  
payment.

10. When the amount agreed for under any such agreement has been paid such court or judge may, if special circumstances appear to require it, re-open the agreement within twelve months after payment, and order taxation and repayment of the whole or a portion of the amount.

Where such agreement is made by the client as guardian, trustee, or committee of any person whose property will be chargeable with the amount payable, the agreement shall before payment be laid before the taxing officer of a court having jurisdiction to enforce the agreement, who shall examine the same, and may disallow any part, or require the direction of the court or a judge to be taken thereon by motion or petition. In case of previous payment of the whole, or part, without the previous allowance by such officer, court, or judge, the trustee, &c., shall at any time be liable to account to the person whose estate is charged with the amount paid. If the solicitor accept payment without such allowance, such court may order him to refund the amount received.

Certain stipula-  
tions prohibited.

11. Nothing contained in this Act shall give validity to a purchase of a client's interest in any suit or action to be brought or maintained, or any agreement stipulating for payment only in the event of success—

12. Nor give validity to contracts void under the bankruptcy laws.

Death or incapa-  
city of solicitor.

13. Where death or incapacity of a solicitor occurs when the agreement is in part performed, such court as before mentioned shall, on application being made, have power to enforce or set aside the same so far as the same may have been acted upon; and if the agreement be fair and reasonable, may order the amount due to be ascertained by taxation, and payment thereof



may be enforced as if the agreement had been completely performed.

14. If, after the agreement shall be made, the client shall change his solicitor before the conclusion of the business (which he may do notwithstanding the agreement), the solicitor shall be deemed to have become incapable to act within sect. 13; and upon any order being made for taxation of the amount due to him, the court shall direct the taxing master to have regard to the circumstances under which such change has taken place; and the solicitor shall not be entitled to the full amount agreed to be paid unless it appears that there has been no default, negligence, or improper delay, or other conduct on his part affording reasonable ground for such change.

Change of  
solicitor.

15. Except as hereinbefore provided, the bill of a solicitor for the amount due under such agreement shall not be subject to taxation, nor to the provisions as to signing and delivering.

Exemption from  
taxation, &c.

#### PART II.—General Provisions.

16. Security may be taken for future costs.

Security for  
costs.  
Interest.

17. Subject to any general rules or orders to be hereafter made, interest may be allowed on taxation in respect of disbursements by a solicitor for his client, and moneys of the client improperly retained by the solicitor.

#### *The Solicitors Act, 1874.*

##### 37 & 38 VICT. c. 68. (a)

4. Sect. 10 of the 23 & 24 Vict. c. 127, shall not henceforth apply to cases in which any person bound by articles as therein mentioned shall before or after he enters upon the office or engages in the employment have applied for and obtained—

Employment of  
articled clerks.

(a) The consent thereto in writing of the solicitor to whom he is bound; and

(b) The sanction thereto of the Master of the Rolls, or one of the judges of the High Court of Justice, to be evidenced by an order of such judge.

*Proviso:* This section shall apply to the case of any person bound by articles expiring after or not more than two years before the passing of this Act, who shall have held any office or been engaged in any employment during the service under such articles before or after the passing of this Act, and who within one year after the passing of this Act, or within one year after the expiration of his articles, shall prove, by an affidavit from the solicitor to whom he is bound, or by such other evidence as shall be satisfactory to such judge, that

(a) See *ante*, p. 346.

the holding of such office, or being engaged in such employment, was with the consent of the solicitor to whom he was or is bound, and has not interfered with due service under such articles; and the judge hearing such application shall have power to make any order which he shall think fit as to the service by the person so bound as aforesaid for the remainder of the term of service of his articles, or any part thereof, after the acceptance of such office, or as to the passing of any examination. *Proviso*: Not less than fourteen days before any such application to a judge is made, notice in writing shall be given to the registrar of [solicitors], stating the names and residences of the applicant and of the solicitor to whom he is bound, and the nature of the office or employment, and the time it is expected to occupy.

Conditions may be imposed.

5. Any such judge making any such order may in and by the order impose on the applicant such terms and conditions touching the office or engagement and his employment therein as such judge thinks fit.

Proof of compliance with conditions.

6. Where any terms or conditions shall be so imposed, and the person authorised by the order shall accept the office, or engage in the employment, he shall, before being admitted a solicitor, prove to the satisfaction of one of the judges aforesaid, and of the examiners for the time being appointed under the provisions of the 23 & 24 Vict. c. 127, or of any Act amending the same, to examine persons applying to be admitted as solicitors, that he has duly observed and fulfilled those terms and conditions.

Notice to registrar of application to strike off roll.

7. Where application is intended to be made for an order or rule to strike the name of any solicitor (not being a solicitor making the application) off the roll of solicitors, or for an order or rule to compel him to answer the matters of an affidavit, notice in writing shall be given to the registrar of such intended application fourteen clear days at the least before such application shall be made.

8. Copies of all affidavits intended to be used in support of such application shall be delivered to the registrar with the notice.

9. The court shall not entertain any such application except upon production of an affidavit proving that the notice required by this Act has been duly given, and that copies of all such affidavits have been duly delivered to the registrar.

Registrar may appear at hearing, &c.

10. The registrar may appear by counsel upon the hearing of any such application, and upon any other proceedings arising out of or in reference to the application, and may apply to the court to make absolute any rule *nisi* which may have been granted by the court in the matter of such application, or to make an order that the name of the solicitor be struck off the roll of solicitors, or, as the case may be, to order the solicitor to

answer the matters of the affidavit, or such other order as to the court may seem fit.

The court may order the costs of the registrar of or relating to any of the matters aforesaid to be paid by the solicitor against whom any such application is made or was intended to be made, or by the person by or on whose behalf the application is made or was intended to be made, or partly by the one and partly by the other of them.

11. The registrar may draw up rules and orders not drawn up by the applicants within one week after the order or direction for drawing up the same shall have been made or given.

12. Any person who wilfully and falsely pretends to be or takes or uses any name, title, addition, or description implying that he is duly qualified to act as a solicitor, or that he is recognised by law as so qualified, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding 10*l.* for each such offence. Penalty for wrongfully acting as solicitor.

No costs, fee, reward, or disbursement on account of or in relation to any act or proceeding done or taken by any person who acts as a solicitor, without being duly qualified so to act, shall be recoverable in any action, suit, or matter by any person or persons whomsoever.

For the purposes of this section, a person shall be deemed to be duly qualified to act as a solicitor if he shall have in force at the time at which he acts as a solicitor a duly stamped certificate authorising him so to do, pursuant to the provisions of the stamp laws and the laws for the time being relating to solicitors, or shall have been appointed to be solicitor of any public department, or if he be a clerk or officer appointed to act for the solicitor for any public department.

Any offence under this Act may be prosecuted before a court of summary jurisdiction, in manner provided by the Summary Jurisdiction Acts. *Proviso:* Such court, when hearing, trying, determining, and adjudging an information or complaint in respect of an offence under this Act, shall be constituted either of two or more justices of the peace in petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

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### *The Legal Practitioners Act, 1875.*

38 & 39 VICT. c. 79.

2. It shall be lawful for any judge of the superior courts of law and equity to authorise a solicitor to commence an action or Power to sue for costs where client about to quit England, &c.

suit for the recovery of his fees, charges, or disbursements against the party chargeable therewith, and also to refer his bill of fees, charges, and disbursements, and the demand of such solicitor thereupon, to be taxed and settled by the proper officer of the court in which such reference shall be made, although one month shall not have expired from the delivery of the bill of fees, charges, or disbursements, on proof to the satisfaction of the said judge that there is probable cause for believing that the party chargeable therewith is about to quit England, or to become a bankrupt or a liquidating or compounding debtor, or to take any other steps or do any other act which, in the opinion of the judge, would tend to defeat or delay such solicitor in obtaining payment.

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*The Solicitors Act, 1877.*

40 & 41 VICT. c. 25.

Certificates to be  
obtained before  
admission.

5. Subject to the exceptions allowed by this Act, or by regulations made under the authority thereof, a person shall not be admitted as a solicitor unless he has obtained from the Incorporated Law Society, or some person authorised in writing by that society, a certificate or certificates to the effect that he has passed a preliminary, an intermediate, and a final examination.

Examinations.

6. The Incorporated Law Society are to hold a preliminary, an intermediate, and a final examination at least three times in every year.

Examiners, *ex officio*.

7. The Masters of the [Supreme Court] are to be *ex officio* examiners for the intermediate and final examinations until the [Lord Chief Justice] and the Master of the Rolls otherwise order; and one of such *ex officio* examiners shall act in the conduct of every such examination in conjunction with the examiners appointed by the society in pursuance of this Act.

Refusal of certificate.

9. Any person who has been refused a certificate of having passed an intermediate or final examination, and who objects to such refusal, whether on account of the nature or difficulty of the questions put to him by the examiners, or on any other ground, may, within one month next after such refusal, appeal by petition to the Master of the Rolls against such refusal, such petition to be presented subject to such regulations as he may from time to time direct. [Here follow provisions as to procedure until the Master of the Rolls otherwise directs.] On the hearing of any such petition, the Master of the Rolls may make such order as to him may seem meet; and where a person who has been refused a certificate of having passed his final examination on such appeal, obtains an order for his admission, such order shall entitle him to a certificate from the Incorporated Law

Society of his fitness and capacity to act as a solicitor as if he had passed his final examination.

10. Persons who have passed certain examinations (as mentioned fully in this section of the Act) need not pass the preliminary examination. Preliminary examination.

11. As to power of judges to grant special exemptions from the preliminary examination.

12. As to exemption of certain barristers from the intermediate examination. Barristers.

13. As to making regulations for admission in certain cases after four years' service.

15. Where any person articulated to a solicitor has not served as a clerk under such articles strictly within the provisions of the Solicitors Act, 1843, and the Solicitors Act, 1860, and any Act amending the same, but subsequently to the execution of his articles *bonâ fide* serves (either continuously or not) one or more solicitors as an articulated clerk for periods together equal in duration to the full term for which he was originally articulated, and has obtained such certificates as required by this Act, the Master of the Rolls may, in his discretion, if he is satisfied that such irregular service was occasioned by accident, mistake, or some other sufficient cause, and that such service, although irregular, was substantially equivalent to a regular service, admit such person to be a solicitor as if the service had been regular. Admission where service irregular.

17. Solicitors may practise in ecclesiastical courts, and matters relating to applications to obtain notarial faculties, and generally shall have the rights and privileges, and may fulfil all the functions of proctors. Solicitors may act as proctors.

18. Commissioners for taking oaths in the Supreme Court of Judicature in England may take oaths in the ecclesiastical courts, or matters ecclesiastical in England, or matters relating to application for notarial faculties. Oaths in ecclesiastical courts.

21. All enactments relating to attorneys shall be construed as if the expression "solicitor" of the Supreme Court were substituted for the expression "attorney." "Solicitor" substituted for "attorney."

### *The Legal Practitioners Act, 1877.*

40 & 41 VICT. c. 62.

2. Any surrogate or other person not being a qualified practitioner, who, for or in expectation of any fee, gain, or reward either directly or as the agent of any other person, whether a qualified practitioner or not, takes instructions for, or draws, or prepares any papers on which to found or oppose a grant of probate or of letters of administration, shall be guilty of an offence within the meaning of the twelfth section of the Solicitors Act, Preparation of probate papers.

1874; but nothing in this section contained shall be construed to affect any remedy against any such person under any other Act or Acts.

3. The term "qualified practitioner" in this Act means and includes any serjeant-at-law, barrister-at-law, certificated solicitor, proctor, notary public, certificated conveyancer, special pleader, or draughtsman in equity.

### *Solicitors' Remuneration Act, 1881.*

44 & 45 VICT. c. 44.

2. Power to make general orders for the remuneration of solicitors in respect of conveyancing matters, and in respect of other business, not being business in any action, or transacted in any court, or in the chambers of any judge or master, and not being otherwise contentious business.

#### *Agreements.*

Power for solicitor and client to agree on form and amount of remuneration.

8. (1.) With respect to any business to which the foregoing provisions of this Act relate, whether any General Order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after, or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the court may inquire into the facts, and certify the same to the court; and if, upon such certificate, it shall appear to the court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the

court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such orders into effect, or otherwise consequential thereon, as to the court or judge may seem fit.

9. The Solicitors Act, 1870, shall not apply to any business 33 & 34 Vict. c. 28. to which this Act relates.

## SUCCESSION DUTY.

### *The Succession Duty Act, 1853.*

16 & 17 Vict. c. 51.

1. “Real property” shall include freehold, copyhold, leasehold, and other hereditaments, whether corporeal or incorporeal, and all estates therein. Interpretation of terms.

“Personal property” shall not include leaseholds, but shall include all property not comprised in the term “real property.”

“Property” shall include real property and personal property.

“Person” shall include a body corporate, company, and society.

2. Every past or future disposition of property, whereby any person has or shall become beneficially entitled to any property, or the income thereof, on the death of any person dying after the commencement of this Act (a), either immediately, or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation (b), and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the commencement of the Act, to any other person in possession or expectancy, shall be deemed to have conferred, or to confer, on the person entitled by reason of any such disposition or devolution, a “succession,” and the term “successor” shall denote the person so entitled, and the term “predecessor” shall denote the settlor, testator, obligor, ancestor, or other person from whom the succession is derived. What dispositions and devolutions of property shall confer successions.

3. Where any persons shall, after the commencement of this Act, have any property vested in them jointly by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship, shall be deemed to be a succession. Joint tenants.

Where any persons, after the commencement, &c., shall take

(a) 19th May, 1853.

(b) This section includes powers of appointment: (*Re Lovelace*, 4 De G. & J. 340; *Re Payton*, 7 H. & Nor. 265.)



any succession jointly, they shall pay the duty in proportion to their respective interests; and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed a new succession derived from the same predecessor.

**Powers of  
appointment.**

4. Where any person shall have a general power of appointment under any disposition of property taking effect upon the death of any person dying after the commencement of this Act, over property, he shall, in the event of his making any appointment, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed as a succession derived from the donor of the power.

Where any person shall have a limited power of appointment under a disposition taking effect upon any such death, over property, any person taking any property by the exercise of such power, shall be deemed to take the same as a succession derived from the person creating the power.

**Determinable  
charges.**

5. Where any property shall be subject to any charge, estate, or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing upon the extinction or determination of such charge, estate, or interest, shall be deemed a succession accruing to the person or persons entitled beneficially to the property or income thereof, according to his or their respective estates or interests therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged, shall be deemed to be the predecessor or predecessors, as the case may be.

**Reversion after  
lease for life.**

6. No person entitled *at the commencement of this Act* to the immediate reversion in any property expectant upon the determination of any lease for life, or for years determinable on life, shall be chargeable with duty in respect of such determination in his lifetime.

**Reservation of  
benefit to  
grantor.**

7. Dispositions accompanied by the reservation of a benefit to the grantor, or any other person, for any period ascertainable only by reference to death, shall, except as in this section mentioned, confer successions, at the time appointed for the determination of such benefit.

**Dispositions to  
evade duty, &c.**

8. Dispositions made to take effect at periods ascertainable only by reference to death, or made for the purpose of evading succession duty, shall confer successions.

**Rates of duty.**

10. Rates of duty. Where the successor shall be—

The lineal issue or lineal ancestor of the predecessor, 0*l.* (a) per cent. upon the value of the succession. A brother or sister, or a descendant of a brother or sister of the predecessor, 3*l.*

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(a) See 44 Vict. c. 12, s. 41, *post*, Part II.



per cent. A brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, 5*l.* per cent. A brother or sister of the grandfather or grandmother, or a descendant of a brother or sister of the grandfather or grandmother of the predecessor, 6*l.* per cent. A person in any other degree of collateral consanguinity, or a stranger in blood to the predecessor, 10*l.* per cent.

11. Where any person chargeable with duty under this Act or the Legacy Duty Acts, in respect of a bequest by a testator dying after the commencement of this Act, or in respect of the personal estate of any person so dying, shall have been married to any wife or husband of nearer consanguinity than himself or herself, to the predecessor, testator, or deceased person, the person taking such succession, legacy, or personal estate, shall pay the same rate of duty only, as his or her wife or husband would have been chargeable with if she or he had taken the same.

Provision as to married persons chargeable with duty.

12. Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the commencement of this Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession.

Where successor also predecessor.

A successor shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself.

No person shall be chargeable with duty upon the determination of any charge, estate, or interest, created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto, expectantly on the death of some person dying after the commencement of this Act. (a)

13. Where the succession shall be derived from more predecessors than one, and the proportional interest derived from each shall not be distinguishable, the commissioners may agree with the successor as to the duty payable; but if no such agreement be made, the succession shall be deemed to have been derived in equal proportions from each predecessor.

Joint predecessors.

14. Where the interest of a successor in personal property shall, before he shall have become entitled in possession, have passed by reason of death to any other successor, one duty only shall be paid, and shall be due from the successor who shall first become entitled in possession, but such duty shall be at the highest

Duty on transmitted successions.

(a) The object of this section was to prevent anyone with a vested estate tail in remainder from diminishing by his own act the rate of succession duty to which he would be liable if he were not to deal with the estate tail till it vests in possession: (6 Chitty's Statutes, 4th ed. 483.)

rate which, if every such successor had been subject to duty, would have been payable by any one of them.

Duties payable  
in respect of  
transferred  
interests.

15. Where any reversionary property expectant on death, shall be vested by alienation or other derivative title in any person, other than the person who shall have been originally entitled thereto, under any such disposition or devolution as is mentioned in sect. 2, the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time, and at the same rate, as the person so originally entitled would have been chargeable with if no such alienation had been made, or derivative title created.

Where any succession shall, before the successor shall have become entitled thereto or the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty shall be paid at the same rate and time as the same would have been payable if no such alienation had been made, or derivative title created.

Where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, the duty shall be payable at the same time, and in the same manner, as if no such acceleration had taken place.

Charitable, &c.,  
purposes.

16. Where property shall become subject to a trust for charitable or public purposes, in cases which would confer a succession on an individual, 10% per cent. duty on the amount or value thereof shall be paid. The duty may be raised by the trustees on the security of the property.

Exemptions.

18. No duty shall be payable—

Where the whole succession or successions derived from the same predecessor, and passing upon any death to any person or persons, shall not amount in value to 100%.

Upon any succession which, as estimated by the provisions of the Act, shall be of less value than 20%.

Upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose.

By any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof.

Where legacy duty is payable.

When duty pay-  
able.

20. The duty shall be paid except as in this section mentioned when the successor, or any person on his behalf, becomes entitled in possession or to the receipt of the income and profits.

How duty  
assessed and  
payable.

21. The interest of every successor, except as in the Act provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property, after making such allowances as are hereinafter directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of

his life, or for any less period during which he shall be entitled thereto.

Every such annuity shall be valued according to the tables in the schedule to the Act. The duty shall be paid by eight equal half-yearly instalments, the first thereof to be paid at the expiration of twelve months next after the successor shall have become beneficially entitled. *Proviso* : If the successor shall die before all such instalments shall have become due, those not due at his decease shall cease to be payable, except in case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case such unpaid instalments shall continue a charge on such interest, in exoneration of his other property, and shall be payable by the owner, for the time being, of such interest.

22. In estimating the annual value of property capable of yielding income not of a fluctuating character, allowance shall be made of all necessary outgoings. Outgoings.

23. Where timber shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net moneys received from any sales thereof, and shall pay the same yearly; but no duty shall be paid on such net moneys received in any one year unless the same shall exceed 10%. The duty payable under this section may be commuted in manner therein mentioned. Timber.

24. A successor shall not be chargeable with duty in respect of any advowson or Church patronage comprised in his succession, unless the same, or some interest therein, shall be sold by him, in which case he shall be chargeable with duty on the amount or value of the money, or money's worth, for which the same shall be so disposed, at the time of such disposal. Advowsons.

25. Where a successor, entitled to any real property subject to any lease by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or other consideration which may be received during his life, for the renewal of any such lease, or the grant of any reversionary lease of the same property. Property subject to beneficial lease.

26. As to the calculation of duty in case of real property of a fluctuating yearly income.

28. As to deductions for fines, &c., in case of successions to copyholds or other real property subject thereto.

29. The interest of a successor in moneys to arise from the sale of real property under a trust for sale, so far as not chargeable with legacy duty, shall be deemed personal property, chargeable with duty under this Act; but where such moneys shall be subject to any trust for re-investment in the purchase Realty directed to be sold.

of real property to which the successor would not be absolutely entitled, such moneys shall be deemed to be real property.

Personalty to be  
invested in  
realty.

30. The interest of any successor in personal property subject to any trust for investment in the purchase of real property to which the successor would be absolutely entitled, shall, so far as not chargeable with legacy duty, be chargeable with duty under this Act as personal property; but if the successor would *not* be absolutely entitled, shall, so far as not chargeable with legacy duty, be chargeable under this Act as real property.

Allowance to  
donee of power.

33. Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he may deduct any duty he may have already paid in respect of any limited interest taken by him in such property.

Incumbrances.

34. In estimating the value of a succession, no allowance shall be made in respect of any incumbrance thereon created by the successor not made in execution of a prior special power of appointment, but allowance shall be made for all other incumbrances, and also for substantial repairs or permanent improvements made by the successor before possession; provided, that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto*.

35. In estimating the value of a succession, no allowance shall be made for a contingent incumbrance, but if it take effect as an actual burden, the successor shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the incumbrance when taking effect.

Contingency.

36. In estimating the value of a succession, no allowance shall be made for a contingency on the happening of which the property may pass to some other person, but if it so pass, the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

Allowances, &c.

37. Provision for allowance or return of duty in proper cases.

38. Where any successor, upon taking a succession, shall be bound to relinquish or be deprived of any other property, the commissioners shall make a just allowance.

39. Power to the commissioners to compound the duty, where the value cannot be fairly ascertained, or in case of complication.

Discount.

40. 4l. per cent. per annum discount may be allowed when the duty is paid in advance.

41. The commissioners may commute future duties.

42. The duty imposed by this Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed, and also on the interest of the successor in personal property while the same shall remain in the ownership or control of the successor or his trustee, guardian, committee, tutor, or curator, or of the husband of any wife who shall be the successor. Such duty shall be a debt due to the Crown, having, in the case of real property comprised in any successor, priority over all charges and interests created by the successor, but shall not charge any other of his real property. Duty to be a first charge on property.

44. Besides the successor, trustees, guardians, committees, &c., shall be personally accountable for succession duty to the extent of property received, and such persons may compound, or pay in advance, or commute any duty and retain the same out of the property, or raise the same on the security thereof. Persons accountable.

45. Notice of succession is to be given to the commissioners, together with a full and true account of the property and the value thereof, deductions, and other particulars. Notice of succession.

46. As to penalties for not giving notice.

50. Any accountable party dissatisfied with the assessment of the commissioners may appeal to the [Queen's Bench Division] or, where the sum in dispute in respect of duty does not exceed 50*l.*, to the County Court. Appeal.

52. Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession, or any part thereof, shall exonerate a *bonâ fide* purchaser for valuable consideration without notice, notwithstanding any suppression or misstatement in the account. Protection to purchasers.

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## TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

4 EDW. 3, c. 7.

Item. Whereas in times past executors have not had actions for a trespass done to their testators as of the goods and chattels of the same testators carried away in their life, and so such trespassers have hitherto remained unpunished: It is enacted that the executors in such cases shall have an action against the trespassers, and recover their damages in like manner as they whose executors they be should have had if they were in life.

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*An Act for the further Amendment of the Law, and the better Advancement of Justice.*

3 & 4 WILL. 4, c. 42.(a)

Actions by and against executors, &c.

2. An action may be maintained *by* the executors or administrators of any person deceased, for any injury to the *real estate* of such person committed in his lifetime, for which he might have maintained an action, so as such injury shall have been committed within six calendar months before the death of such person; and provided such action shall be brought within *one year* after the death of such person, and the damages, when recovered, shall be part of the personal estate of such person.

An action may be maintained *against* the executors or administrators of any person deceased, for any wrong committed by him in his lifetime to another, in respect of his property *real or personal*, within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate. (b)

14. An action of debt on simple contract shall be maintainable in any court of common law against any executor or administrator.

Power to executors, &c., to distrain.

37. It shall be lawful for the executors or administrators of any lessor or landlord to distrain for rent due in his lifetime in like manner as such lessor or landlord could have done.

38. Such rent may be distrained for within six months after the determination of the term of tenancy, and during the continuance of the possession of the tenant.

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*An Act for better securing Trust Funds and for the Relief of Trustees.*

10 & 11 VICT. c. 96.(c)

Trustees, &c., may pay moneys or transfer stocks, &c., into court.

1. All trustees, executors, administrators, or other persons, having in their hands any moneys, or any stocks or securities, standing in their names, belonging to any trust, or the major part of them, may, on filing an affidavit shortly describing the instrument creating the trust, pay such moneys into the

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(a) For other sections of this Act, see *ante*, pp. 135 and 190.

(b) Where an action founded on tort was commenced against a defendant who died more than six months afterwards, it was held that it could not be properly continued against his executors: (*Kirk v. Todd*, 46 L. T. 192; 51 L. J. 445, Ch.)

(c) For the practice under this Act, see Haynes's *Chancery Practice*, pp. 299 *et seq.*

[Chancery Division], and transfer or deposit such stocks and securities into or in the name of the [Paymaster-General], in trust to attend the orders of the court.

2. Such orders may be made upon petition.

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*An Act for the further Relief of Trustees.*

12 & 13 VICT. c. 74. (a)

This Act gives power to the court, upon application of a majority of the trustees, to order the payment or transfer of trust moneys, stocks, or securities, as mentioned in the previous Act, into the [Chancery Division]. Court may order payment, &c.

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*The Trustee Act, 1850.*

13 & 14 VICT. c. 60. (a)

3. When any lunatic, or person of unsound mind, shall be possessed of any lands upon trust or by way of mortgage, the Lord Chancellor may order that such lands be vested in such person or persons, in such manner, and for such estate, as he shall direct, and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment in accordance therewith. Lunatic, &c., trustees and mortgagees.

4. Similar enactment with regard to *contingent* rights of lunatic, &c., trustees and mortgagees.

5. When any lunatic, or person of unsound mind, shall in like manner be solely entitled to any stock or *chose in action*, the Lord Chancellor may make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends, or to sue for and recover such *chose in action* or any interest in respect thereof.

When any person or persons shall be so entitled jointly with any lunatic, &c., the Lord Chancellor may make a similar order vesting such right either in such person or persons jointly entitled, or in them together with any other person or persons the Lord Chancellor may appoint. (b)

6. When any stock shall be standing in the name of any deceased person whose personal representative is a lunatic, &c., or when any *chose in action* shall be vested in any lunatic, &c., as the personal representative of a deceased person, the Lord

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(a) For the practice under this Act, see Haynes's Chancery Practice, pp. 299 *et seq.*

(b) The petition must be served upon the committee of the estate of the lunatic: (*Re Saumarez*, 25 L. J. 575, Ch.)



Chancellor may make an order vesting such rights as mentioned in sect. 5, in any person or persons he may appoint.

Infant trustees  
and mortgagees.

7. Where an infant shall be possessed of lands upon any trust or by way of mortgage, the [Chancery Division] may make such vesting order as it shall direct, which shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a conveyance or assignment in accordance therewith.

8. Similar enactment with regard to *contingent* rights of infant trustees and mortgagees.

Where trustee  
out of jurisdic-  
tion, &c.

9. When any person solely possessed of lands upon trust, shall be out of the jurisdiction, or cannot be found, the court may make such vesting order as it shall direct, which shall have the same effect as if the trustee had duly executed a conveyance or assignment in accordance therewith.

10. When any person or persons shall be possessed of lands jointly with a person out of the jurisdiction, or who cannot be found, the court may make an order vesting the lands in the person or persons so jointly possessed, or in such person or persons together with any other person or persons, in such manner, and for such estate, as the court shall direct, which shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment in accordance therewith.

11. When any person solely entitled to a contingent right in any lands upon trust shall be out of the jurisdiction, or cannot be found, the court may make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said court shall direct, which shall have the same effect as if the trustee had executed a conveyance in accordance therewith.

12. When any person jointly entitled with any other person or persons to a contingent right in any lands upon trust shall be out of the jurisdiction, or cannot be found, the court may make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled, or to them together with any other person or persons, which shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance in accordance therewith.

Where survivor  
of trustees  
uncertain.

13. Where there shall have been two or more persons jointly possessed of lands upon trust, and it shall be uncertain which of such trustees was the survivor, the court may make such vesting order as it shall direct, which shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment in accordance therewith.

14. Similar enactment where it is uncertain whether the last trustee be living or dead.



15. Where any person seised of lands upon trust shall have died intestate as to such lands, without an heir, or shall have died, and it shall not be known who is his heir or devisee, the court may make such vesting order as it shall direct, which shall have the same effect as if such heir or devisee had duly executed a conveyance in accordance therewith.

Where trustee dies without heir.

16. When any lands are subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would, in respect thereof, become possessed thereof upon trust, the court may make an order which shall wholly release and discharge such lands from such contingent right, or which shall vest in any person or persons the estate or estates which such unborn person, or class, would, upon coming into existence, be possessed of in such lands.

Contingent right of unborn trustee.

19. When any person to whom lands have been conveyed by way of mortgage, shall have died without having entered into possession or receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance of such lands, then in any of the following cases the court may make such vesting order as it shall direct—

Vesting order in lieu of reconveyance.

When an heir or devisee of such mortgagee shall be out of the jurisdiction or cannot be found.

When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands, or his duly authorised agent, have stated in writing that he will not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or his agent.

When it shall be uncertain which of several devisees of such mortgagee was the survivor.

When it shall be uncertain as to the survivor of several devisees of such mortgagee, whether he be living or dead.

When such mortgagee shall have died intestate as to such lands, and without an heir, or shall have died, and it shall not be known who is his heir or devisee.

The order made in any one of the foregoing cases shall have the same effect as if the heir or devisee had duly executed a conveyance or assignment in accordance therewith.

20. If more convenient, instead of making such vesting order, the court may make an order appointing a person to convey, &c.

22. When any person or persons shall be jointly entitled with any person out of the jurisdiction, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or *choses in action* upon trust, the court may

When trustee of stock out of jurisdiction.

make a similar vesting order to that secondly mentioned in sect. 5, and when any sole trustee of any stock or *chase in action* shall be out of the jurisdiction, or cannot be found, or it shall be uncertain whether he be living or dead, the court may make a similar vesting order to that first mentioned in sect. 5.

Refusal of  
trustee of stock  
to transfer.

23. Where *any sole trustee* of any stock or *chase in action* shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such *chase in action* or any interest in respect thereof, according to the direction of the person absolutely entitled for twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, the court may make a similar vesting order to that first mentioned in sect. 5.

24. Where *any one of the trustees* of any stock or *chase in action* shall so neglect or refuse, &c., the court may make an order vesting the right, &c. (as first mentioned in sect. 5), in the other trustee or trustees, or in any person or persons whom the court may appoint, jointly with them.

When stock  
standing in name  
of deceased  
person.

25. When any stock shall be standing in the sole name of a deceased person, and his personal representative shall be out of the jurisdiction, or cannot be found, or it shall be uncertain whether he be living or dead, or such representative shall neglect or refuse to transfer such stock, or receive the dividends or income thereof according to the direction of the person absolutely entitled thereto, for *twenty-eight* days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, the court may make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the court may appoint.

Powers under  
vesting order.

26. Where any order shall have been made under this Act, vesting the right to any stock in any person or persons appointed as aforesaid, such persons may execute all deeds and powers of attorney, and perform all acts in conformity with the terms of such order.

27. Where any order shall have been made under this Act, vesting the legal right to sue for or recover any *chase in action*, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly, and such person or persons may carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity, for the recovery thereof.

28. When an order shall be made under this Act vesting copyholds in any person or persons with the consent of the lord of the manor, the lands shall, without surrender or admittance, vest accordingly.

When an order shall be made under this Act appointing any person or persons to convey or assign copyholds, such person or persons may do all acts, and execute all instruments for the purpose of completing the assurance thereof; and every lord of a manor shall, subject to the customs thereof, be bound to do all acts for the purpose of completing such assurance.

29. When a decree is made directing the sale of any lands for payment of the debts of a deceased person, every person possessed of such lands, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be possessed or entitled, as the case may be, upon a trust within this Act, and the court may make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.

Decree for sale of realty to pay debts.

30. Where a decree shall be made by a court of equity for specific performance of a contract concerning lands, or for partition or exchange of lands, or conveyance or assignment of lands, the court may declare that any of the parties to the suit wherein such decree is made are trustees of such lands, or any part thereof within this Act, or declare concerning the interests of unborn persons who might claim under any party to the suit, or under the will or voluntary settlement of any person deceased, who was during his life a party to the transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the Act, and the Lord Chancellor, or the court, may make such orders as to the estates, rights, and interests of such persons, born or unborn, as the court or Lord Chancellor might under this Act make concerning the estates, &c., of trustees, born or unborn.

Court may declare what parties are trustees, &c., and as to interests of unborn persons.

31. The Lord Chancellor, or the court, may make declarations and give directions concerning the manner in which the right to any stock or *choses in action*, vested under the provisions of this Act, shall be exercised.

Directions by court, &c.

32. Whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do, without the assistance of the court, the court may make an order appointing a new trustee or new trustees, either in substitution for, or in addition to, any existing trustee or trustees. (a)

Court may appoint new trustees.

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(a) Sect. 81 of 44 & 45 Vict. c. 41 (*post*) having given a power to appoint new trustees in every case where a trust is subsisting, it is now improper to apply to the court for the appointment of new trustees under this section, unless there is some reason making it "difficult, inexpedient, or impracticable to appoint them without the assistance of the court," other than the mere absence of a power to do so in the instrument creating the trust: (*Re Gibbons's Trusts*, 45 L. T. 755.)

33. Such trustee or trustees shall have all the same rights and powers as if appointed by decree.

34. The court may direct that any lands subject to the trust shall vest in such new trustee or trustees, for such estate as the court shall direct, with the same effect as if the person or persons who, before such order, were the trustee or trustees (if any) had executed proper conveyances and assignments of such lands, for such estate.

35. The court may vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any *chose in action* subject to the trust, or any interest in respect thereof, in such new trustee or trustees.

36. Any such appointment of new trustees, and any such conveyance, assignment, or transfer, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under a power in any instrument would have done.

Who may apply.

37. An order under any of the hereinbefore contained provisions for the appointment of a new trustee or trustees, or concerning any lands, stock, or *chose in action* subject to a trust, may be made upon the application of any person beneficially interested, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

An order under any of the provisions hereinbefore contained concerning any lands, stock, or *chose in action* subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

40. Such applications may be made by petition.

Trustees of  
charities.

45. The Lord Chancellor, or the court, may exercise the powers herein conferred for the purpose of vesting any lands, stock, or *chose in action*, in the trustees of any charity or society over which the court would have jurisdiction, upon suit duly instituted.

Money of infant,  
&c., to be paid  
into court.

48. Where an infant, or person of unsound mind, shall be entitled to any money payable in discharge of any lands, stock, or *chose in action*, conveyed, assigned, or transferred under this Act, the person by whom such money is payable may pay it into court, in trust in any cause then depending concerning such money, or, if no such cause, to the credit of such infant or person of unsound mind, subject to the order of the court.

Decree where  
trustee absent.

49. If in a suit a defendant, who is only a trustee, cannot be found, the court may make such absolute decree as if such trustee had been duly served and had appeared.

Costs.

51. Costs of petitions, orders, directions, conveyances, assign-

ments, and transfers, in pursuance of this Act, may be paid out of the estate, or in such manner as the Lord Chancellor, or court, shall think proper.

52. Upon a petition presented under this Act to the Lord Chancellor concerning a person of unsound mind, the Lord Chancellor may direct a commission *de lunatico inquirendo* to issue, and postpone any order on such petition until the return thereof. Commission  
*de lun. inq.*

53. Upon a petition under this Act being presented to the Lord Chancellor, or the court, any order thereon may be postponed until the right of the petitioner shall have been declared in a suit duly instituted for that purpose. Suit may be  
directed.

### *An Act to extend the Provisions of the Trustee Act, 1850.*

15 & 16 VICT. c. 55.

1. When any decree or order shall have been made by any court of equity directing the sale of lands, every person possessed of such lands, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby or otherwise bound by such decree or order, shall be deemed to be possessed or entitled (as the case may be) upon a trust, within the meaning of the Trustee Act, 1850, and the court may, if it shall think expedient, make an order vesting such lands, or any part thereof, for such estate as the court shall think fit, in a purchaser or other person, with the same effect as if such person so possessed or entitled, had been free from disability, and had executed proper conveyances and assignments of such lands, for such estate. Vesting order  
after decree or  
order for sale.

2. Where any person shall be jointly or solely possessed of any lands, or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or his duly authorised agent, requiring such trustee to convey or assign the same, or to release such contingent right, the court, if satisfied that such trustee has wilfully refused or neglected to convey or assign for twenty-eight days after such demand, may make an order vesting such lands in such person, in such manner and for such estate as the court shall direct, or releasing such contingent right in such manner as the court shall direct, with the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner, and for the same estate. Vesting order on  
refusal or neglect  
of trustee to  
convey, &c.

3. When an infant shall be solely entitled to stock upon trust, the court may make an order vesting in any person or persons the right to transfer such stock, or receive the dividends thereof. Vesting order  
where infant  
entitled to stock  
upon trust.

When an infant shall be jointly entitled to stock upon trust, the court may make an order vesting the right to transfer such stock, or receive the dividends thereof, either in the person or persons jointly entitled with the infant, or in him or them together with any other person or persons the court may appoint.

Vesting order on refusal, &c., to transfer stock.

4. Where any person shall neglect or refuse to transfer stock, or to receive the dividends thereof, or sue for or recover any *chose in action*, or any interest in respect thereof, for twenty-eight days next after an order of the court for that purpose, shall have been served upon him, the court may make an order vesting all the right of such person so to do, in such person or persons as the court may appoint.

5. The court may make a similar order in case of a like refusal or neglect of a personal representative to transfer stock, or receive the dividends thereof.

6. Similar enactment to 13 & 14 Vict. c. 60, s. 26 (*ante* p. 366).

New trustees

8. Power to the court to appoint new trustees in the place of persons convicted of felony, and to make vesting orders.

9. Sect. 32 of the 13 & 14 Vict. c. 60 (*ante*, p. 367), extended so as to take effect whether there be any existing trustee or not at the time of making such order.

Stamp duty.

13. Orders under the Trustee Act, 1850, and this Act are to be stamped with the same duty as conveyances, and shall also bear a denoting stamp.

### *An Act to further amend the Law of Property, and to Relieve Trustees.*

22 & 23 VICT. c. 35. (a)

Raising money for debts or legacies where no express power.

14. Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate, or any specific portion thereof, with the payment of his debts, or any legacy or other specific sum of money, and shall have devised such estate to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money, out of such estate, the said devisee or devisees in trust may, notwithstanding any trusts actually declared by the testator, raise such debts, &c., by sale or mortgage, or partly in one mode and partly in the other.

15. The powers conferred by the last section shall extend to all persons in whom the estate devised shall, for the time being,

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(a) For other sections of this Act, see titles "Inheritance," "Judgments," "Leases," and "Real Property (Miscellaneous Acts)."

be vested by survivorship, descent, or devise, and to new trustees.

16. If any testator who shall have created such a charge as described in sect. 14, shall not have devised the hereditaments charged, in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being of the will, shall have the like power of raising the said moneys.

Any sale or mortgage under this Act shall operate only on the estate and interest of the testator, and shall not render it necessary to get in any outstanding subsisting legal estate.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sects. 14, 15, and 16, shall have been duly exercised.

18. Sects. 14, 15, and 16 shall not affect sales or mortgages made in pursuance of any will coming into operation before the passing of this Act.

The said sections shall not extend to a devise in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee to sell or mortgage.

#### *Trustees and Executors.*

26. (a) No trustee, executor, or administrator making any payment or doing any act *bond fide* under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bond fide* done, was not known to such trustee, &c. *Proviso*: Nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money, against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, &c., if the money had not been paid away under such power of attorney.

Payments under power of attorney where donor of power dead, &c.

27. Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum

Liability of executor, &c., in respect of rents, covenants, &c.

(a) See s. 42 of 44 Vict., 41, *ante*, p. 256.



covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised; although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased amongst the parties entitled, without appropriating any part, or any further part (as the case may be) of such personal estate to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

28. This section contains a provision similar to sect. 27, as to cases where an executor or administrator is liable to the rent, covenants, or agreements contained in any conveyance on chief rent or rentcharge or agreement for such conveyance, granted or assigned to, or made and entered into with the testator or intestate.

Notices to  
creditors and  
others to send in  
claims.

29. Where an executor or administrator shall have given such or the like notices as in the opinion of the court in which he is sought to be charged would have been given by the [Chancery Division] in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but without prejudice to the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Application to  
judge of Chan-  
cery Division for  
opinion, advice,  
&c.

30. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the [Chancery Division] or by summons upon a written statement to any such judge at chambers, for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust property, or the



assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, &c., acting upon the opinion, &c., given by the said judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, &c., in the subject matter of the said application. *Proviso:* This Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction, if he shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, &c., and the costs of the application shall be in the discretion of the judge(a).

31. Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following: "That the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

Indemnity, &c.,  
of trustees.

32. Power to trustees, executors, or administrators, when not expressly forbidden by the instrument creating the trust, to invest trust funds on the stock of the Bank of England or Ireland, or on East India Stock: *Investments.*

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*An Act to confirm certain Sales, Exchanges, Partitions,  
and Enfranchisements, by Trustees and others.*

25 & 26 VICT. c. 108.

1. The enactments in the first paragraph of sect. 2 are to take effect retrospectively.

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(a) Such petition or statement must be signed by counsel: (23 & 24 Vict. c. 38, s. 9.)

Sale of land  
without  
minerals, and  
*vice versa*.

2. Every trustee and other person (a) now or hereafter to become authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, may, unless forbidden by the instrument creating the trust or power, so dispose of such land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of such minerals, or may, unless forbidden as aforesaid, dispose of, by sale, exchange, or partition, the minerals, with or without such rights or powers, separately from the residue of the land.

No such disposition must be made without the sanction of the [Chancery Division] previously obtained on petition; which sanction, once obtained, shall extend to future dispositions within this enactment of any part of the land comprised in the order to be made on such petition, without the necessity of another application.

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*The Mortgage Debenture Act, 1865.*

28 & 29 VICT. c. 78.

40. Power to trustees having a general power to invest on security of shares, stock, mortgages, bonds or debentures of companies incorporated by, or acting under the authority of, an Act of Parliament, to invest on the security of mortgage debentures issued in accordance with the provisions of this Act.

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*Investment of Trust Funds Act.*

30 & 31 VICT. c. 132.

2. Every trustee, executor, or administrator, may invest trust funds in any securities the interest whereof is or shall be guaranteed by Parliament.

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*An Act to amend the Acts relating to the Jurisdiction of the County Courts.*

30 & 31 VICT. c. 142.(b)

By this Act trustees, &c., may pay trust moneys, or transfer stock and securities into the County Court to the extent of 500*l*.

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(a) Including mortgagees: (*Re Beaumont*, 12 Eq. 86; *Re Wilkinson*, 18 Eq. 634.)

(b) For other sections of this Act, see Part II., title "Statutes relating to the County Courts."

*The National Debt Act, 1870.*

33 &amp; 34 VICT. c. 71.

17. The Bank of England shall not be required to allow any executors or administrators to receive any dividends on stock held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the bank for registration.

23. The interest of a stockholder dying (before or after the passing of this Act) in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof.

The Bank of England shall not be required to allow any executors or administrators to transfer any stock until the probate of the will or the letters of administration has or have been left with the bank for registration, and may require all the executors who have proved the will to join in the transfer.

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*The Debenture Stock Act, 1871.*

34 &amp; 35 VICT. c. 27.

This Act gives power to trustees to invest trust funds in debenture stock where already authorised to invest in the mortgages or bonds of a company.

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*The Metropolitan Board of Works (Loans) Act, 1871.*

34 &amp; 35 VICT. c. 47.

By this Act trustees are empowered to lend trust money on Metropolitan Consolidated Stock.

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*An Act to Amend the Law relating to Securities for Loans Contracted by Local Authorities.*

38 &amp; 39 VICT. c. 83.

27. Power to trustees or other persons authorised or directed to invest in the debentures or debenture stock of any company, unless the contrary is provided by the instrument authorising or directing such investment, to invest in nominal debentures, or nominal debenture stock, issued under this Act.

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*The Conveyancing Act, 1881.*

44 &amp; 45 VICT. c. 41.

## VL.—TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of  
trust and mort-  
gage estates on  
death.

30. (1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

## VII.—TRUSTEES AND EXECUTORS.

Appointment of  
new trustees,  
vesting of trust  
property, &c.

31. (1.) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom, for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable as aforesaid. (a)

(2.) On an appointment of a new trustee the number of trustees may be increased.

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(a) See note to sect. 32 of the Trustee Act, 1850, *ante*, p. 367.

(3.) On an appointment of a new trustee it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

32. (1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

Retirement of trustee.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

33. (1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the court, or by any other court

Powers of new trustees appointed by court.

of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Power for trustees for sale to sell by auction, &c.

35. (1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to resell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

36. (1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof. Trustees' receipts.

(2.) This section applies to trusts created either before or after the commencement of this Act.

37. (1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient. Power for executors and trustees to compound, &c.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created before or after the commencement of this Act.

38. (1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. Powers to two or more executors or trustees.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.



*The Settled Land Act, 1882.*

45 &amp; 46 VICT., c. 38. (a)

## X.—TRUSTEES.

Appointment of  
trustees by court.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act: (b)

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for the purposes of this Act become and be the trustees or trustee of the settlement.

Number of  
trustees to act.

39. (1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of the Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees'  
receipts.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection to  
each trustee  
individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in

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(a) For the other sections of this Act see *ante*, p. 315.

(b) In appointing trustees the court will be most careful to protect the interest of remaindermen, so far as possible, by appointing indifferent persons as trustees, and will not, if it can be helped, appoint a tenant for life of the settled property to be a trustee: (*Re Harrop's Settled Estate*, 48 L. T. 937. And see *Re John Walker's Trusts*, *id.* 632.)



respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

Protection of  
trustees  
generally.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Trustees' reim-  
bursement.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the court thinks fit.

Reference of  
differences to  
court.

45. (1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

Notice to  
trustees.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

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*The Conveyancing Act, 1882.*

45 & 46 VICT. c. 39. (a)

*Separate Trustees.*

Appointment of  
separate sets of  
trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

*Powers.*

Disclaimer of  
power by  
trustees.

6. (1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

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USES.

*The Statute of Uses.*

27 HEN. 8, c. 10.

Possession of  
lands to be in  
him or them that  
have the use.

1. Where any person or persons shall be seized of any lands, tenements, or hereditaments, to the use, confidence, or trust, of any other person or persons, or body politic, such person or persons and bodies politic, that shall have any such use, confidence, or trust, shall be seized and deemed in lawful seizin and possession of the same lands, tenements, and hereditaments, of and in such like estates as they shall have in use, trust, or confidence of or in the same. (b)

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(a) For other sections of this Act see *ante*, pp. 174, 227, 257, 292.

(b) The statute only executes the first use: (*Tyrell's case*, Dyer, 155a.) It does not extend to copyholds, nor to leaseholds.

2. Where persons shall be jointly seized of lands, tenements, or hereditaments, to the use, confidence, or trust of any of them, the person or persons having such use, &c., shall have only to him or them such estate, possession, or seizin, in the same lands, &c., as he or they had before in the use, &c. Persons jointly seized.

3. Where persons stand seized of any lands, tenements, or hereditaments, to the use and intent that some other person or persons shall have yearly to them and to his or their heirs, an annual rent out of the same, and some other person another annual rent to him and his assigns, for life or years, or some other special time, the persons that have such use and interest shall be deemed in possession, and seizin of the same rent, in such like estate as they had in the interest or use, and may distrain for such rent, and have the same remedies as if such rents had actually been granted to them. Land assured to use that rent should be paid thereout.

By other sections it is provided that a married woman shall not be entitled both to jointure and dower out of the lands of her husband; but in case the jointure shall be given to her after marriage (and not by Act of Parliament), she may elect to take the same or her dower. Jointure and dower.

## WARRANT OF ATTORNEY, AND COGNOVIT.

*An Act for preventing Frauds upon Creditors by Secret Warrants of Attorney to confess Judgment.*

3 GEO. 4, c. 39.

1. Every warrant of attorney to confess judgment in any personal action, or a true copy thereof, and of the attestation thereof, and the defeasance and indorsements thereon, in case the same shall be given to confess judgment in the King's Bench, or such a true copy as aforesaid if in any other court, shall within twenty-one days after execution be filed with an affidavit of the time of execution in the King's Bench. (a) Warrants of attorney and cognovits to be filed.

2. Unless so filed, or judgment signed and execution issued within the same period, the warrant of attorney shall be deemed fraudulent and void in case of the bankruptcy of the person giving the same.

3. Enactments similar to the above in case of a *cognovit actionem*.

4. If such warrant of attorney or *cognovit* shall be given subject to any defeasance or condition, the same shall be written on the same paper or parchment with the warrant of attorney or *cognovit* before filing, otherwise such warrant of attorney or *cognovit* shall be null and void. Defeasance.

8. A judge of the court in which such warrant of attorney Satisfaction.

(a) Such documents are now filed in the Central Office.

or *cognovit* is given, may order satisfaction to be written thereon if it shall appear to him that the debt for which the same is given as a security shall have been satisfied or discharged.

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*An Act to enlarge the Provisions of the 3 Geo. 4, c. 39.*

6 & 7 VICT. c. 66.

By this Act it is provided that a book shall be kept at the [Central] Office containing the names, additions, and descriptions of persons giving such warrants of attorney or *cognovits*, but no further particulars, and which book shall be open to public inspection.

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*The Debtors Act, 1869.*

32 & 33 VICT. c. 62.(a)

PART III.

Warrants of attorney, cognovits, and judges' orders to be filed.

24 and 26. Every warrant of attorney and *cognovit actionem* shall be executed in the presence of an attorney on behalf of the person giving the same, and shall be filed in the [Central Office] within twenty-one days after execution, and if given subject to any defeasance or condition, the same shall be written on the same paper or parchment, with the warrant or *cognovit* before the filing thereof.

27. Judges' orders made by consent to enter up judgment shall be filed in the [Central Office] within twenty-one days.

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WILLS.

*An Act for the Amendment of the Laws with respect to Wills.*

1 VICT. c. 26.

All property may be disposed of by will.

3. Every person may dispose of by his will all property which he shall be entitled to at the time of his death, including copyholds, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding he shall not have been admitted, and also estates *pur autre vie*, whether there shall be any special occupant or not, and also contingent, executory, or other future interests, and rights of entry, and also such property as the testator may be entitled to at the time of his death, notwithstanding he may become entitled to the same subsequently to the execution of his will.

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(a) For Part I. of this Act see *ante*, p. 136, and for Part II. see *post*, Part III.

4. The Act is not to prejudice the rights of lords of manors as to fines, &c.

5. When copyholds shall be disposed of by will, such will, or Copyholds so much thereof as shall contain such disposition, shall be entered on the court rolls, and when any trusts are declared concerning the same, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry that such estate is subject to the trusts declared by such will; and when any such estate could not have been disposed of by will if this Act had not been made, the same fine, &c., shall be paid by the devisee as would have been due from the customary heir in case of descent.

6. If no disposition be made by will of a freehold estate *pur autre vie*, the same shall be chargeable in the hands of the heir *Estates pur autre vie.* if special occupant as assets by descent, and in case there be no special occupant of any estate *pur autre vie*, it shall go to the executor or administrator as personal estate.

7. No will made by any person under the age of twenty-one Infant. shall be valid.

8. No will made by any married woman shall be valid, except Married woman. such a will as might have been made by a married woman before the passing of this Act.

9. No will shall be valid unless it shall be in writing, and Execution. signed at the foot or end thereof, by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of a testator, but no form of attestation shall be necessary. (a)

10. No appointment by will in exercise of any power shall Appointment by will. be valid unless executed in manner hereinbefore required; but, if so executed, it shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

11. Provided that any soldier in actual military service, or any Soldiers, &c. mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

13. Every will executed in manner hereinbefore required shall No publication. be valid without any other publication thereof.

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(a) An attesting witness may sign for a testator by his direction: (*Smith v. Harris*, 1 Rob. 262; *Re Bayley*, 1 Curt. 914.) Although no form of attestation is required by the Act, yet it is better to adopt the ordinary form in order to avoid the trouble and expense of procuring an affidavit as to due execution from one of the attesting witnesses on application for probate.

Incompetency of witness.

14. If any person who shall attest the execution of a will shall, at the time, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not, on that account, be invalid.

Attesting witnesses.

15. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, &c., shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be null and void; but such person so attesting shall be admitted as a witness to prove the execution or validity or invalidity of such will. (a)

16. A creditor attesting a will containing a charge for payment of debts shall be admitted a witness.

17. An executor may be an attesting witness.

Revocation.

18. Every will shall be revoked by marriage, except a will made in exercise of a power of appointment when the estate thereby appointed would not, in default of appointment, pass to the heir, executor, or administrator, or next of kin, under the Statute of Distributions.

19. No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

20. No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same and executed like a will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Alterations.

21. No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscriptions of the witnesses be made in the margin, or on some other part of the will opposite

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(a) A legatee under a will may attest a codicil to the will without losing his legacy: (*Gurney v. Gurney*, 24 L. J. 656, Ch.) And where between the execution of a will and the death of the testator one of the attesting witnesses was married to one of the devisees under the will, the devise was held to be good: (*Thorpe and others v. Bestwick*, 44 L. T. 180; 6 Q. B. Div. 311; 50 L. J. 820, Q.B.)

or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

22. No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same, and when any will or codicil which shall be partly and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

23. No conveyance or other act made or done subsequently to the execution of a will, of or relating to any property therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such property as the testator shall have power to dispose of by will at the time of his death.

Conveyance, &c.,  
subsequent to  
devise.

24. Every will shall be construed with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. (a)

Will speaks from  
death.

25. A residuary devise shall include estates comprised in lapsed and void devises, unless a contrary intention shall appear by the will.

Residuary  
devise.

26. A general devise of the land of the testator, and any other general devise which would describe a copyhold or leasehold estate if the testator had no freehold estate which could be described by it, shall include the copyhold and leasehold estates of the testator, or any of them to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

General devise.

27. A general devise shall be construed to include any real estate over which the testator has a general power of appointment, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Similar enactment with regard to a general bequest of personal estate.

General bequest.

28. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Devise without  
words of  
limitation.

(a) A bequest of a leasehold interest in houses, the reversion of which was, after the date of the will, purchased by the testator, was held to pass the entire interest in the houses: (*Miles v. Miles*, 2 Bar. Rep. 697; *Saxton v. Saxton*, 41 L. T. 648; 13 Ch. Div. 359; 49 L. J. 128, Ch.)



"Die without issue."

29. In any devise or bequest, the words "die without issue," or "die without leaving issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue, in the lifetime or at the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will. *Proviso*: This Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate, by a preceding gift to such issue. (a)

Devise to trustee or executor.

30. Where any real estate (not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the whole estate or interest therein which the testator had power to dispose of by will, unless a definite term of years, or an estate of freehold, be given to him expressly or by implication.

31. Where any real estate shall be devised to a trustee, without any express limitation, and the beneficial interest therein, or in the surplus rents and profits thereof, shall not be given to any person for life, or shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall vest the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate.

Devise of estate tail.

32. Where a devisee of an estate tail or *quasi* entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devises and bequests to issue of testator.

33. Where any child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

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(a) The word "issue" in a will is not a technical expression, and will give way to the intention of the testator to be collected from the will: (*Lees v. Mosley*, 1 Y. & Coll. 589.)



*The Wills Act Amendment Act, 1852.*

15 VICT. c. 24.

1. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him, be valid, if the signature shall be so placed at or after, or following or under, or beside or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause, or of the clause of attestation, or shall follow or be after or under the clause of attestation either with or without a blank space intervening, or shall follow, or be after or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written, to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment.

When signature to a will shall be deemed valid.

No signature shall give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

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*An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects.*

24 &amp; 25 VICT. c. 114.

1. Every testamentary instrument made *out of* the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted to probate if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where the person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin.

Admission to probate of wills made out of the kingdom.

2. Every testamentary instrument made *within* the United

Admission to probate of wills made *within* the kingdom.

Kingdom by any British subject (whatever, &c., as in s. 1) shall, as regards personal estate, be held to be well executed, and shall be admitted to probate, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

Change of domicile.

3. No testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Act not to invalidate wills otherwise made.

4. Nothing in this Act shall invalidate any testamentary instrument as regards personal estate which would have been valid if this Act had not been passed, except as such testamentary instrument may be revoked or altered by any subsequent testamentary instrument made valid by this Act.

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*The Navy and Marines (Wills) Act, 1865.*

28 & 29 Vict. c. 72.

Regulations for wills of seamen, &c.

5. Wills of seamen or marines shall not be valid to pass wages, prize money, bounty money, grant or other like allowances, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty, unless—

- (1.) Such will be in writing, and executed with the usual formalities of English law.
- (2.) Where made on board ship, one witness shall be an officer.
- (3.) Where made elsewhere, one witness shall be an officer, or the governor, agent, physician, surgeon, assistant surgeon, or chaplain of a naval hospital, or minister of a place of worship in the parish where the will is executed, or a British Consul, or an officer of customs, or a notary public.

Wills of prisoners of war.

6. Wills of seamen and marines being prisoners of war, shall be valid as regards the form thereof, if—

- (1.) In writing, and signed in the presence of, and attested by one witness, being an officer, agent of naval hospital, or notary public.
- (2.) Made according to the forms of law of the place where made.
- (3.) In writing, and executed with the usual formalities of English law.

Payment under informal will.

7. The Admiralty may pay or deliver money to any person claiming under such will, though not made as aforesaid, if they are of opinion, having regard to the special circumstances of the death of the testator, that the requirements of this Act may be dispensed with.

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## PART II.

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### STATUTES RELATING TO THE SUPREME AND COUNTY COURTS.

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#### STATUTES RELATING TO THE CONSTITUTION, JURISDICTION, &c., OF THE SUPREME COURT.

*Supreme Court of Judicature Act, 1873.*

36 & 37 VICT. c. 66.

##### PART I.—*Constitution and Judges of Supreme Court.*

3. From and after the time appointed for the commencement of this Act the several courts following, viz. :—The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, shall be united and consolidated together, and shall constitute under and subject to the provisions of this Act one Supreme Court of Judicature in England. (a) Union of existing courts.

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of Her Majesty's "High Court of Justice" shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior courts as is hereinafter mentioned; and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as is hereinafter mentioned as may be incident to the determination of any appeal. Divisions of Supreme Court.

5. Her Majesty's High Court of Justice shall be constituted as follows :—The first judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Constitution of High Court of Justice.

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(a) To these has been added, by sect. 93 of the Bankruptcy Act, 1883, the London Bankruptcy Court.

Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid judges as shall be appointed ordinary judges of the Court of Appeal.

Subject to the provisions hereinafter contained, whenever the office of a judge of the said High Court shall become vacant a new judge may be appointed thereto by Her Majesty by letters patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron and their successors respectively shall continue to be appointed to the said respective offices with the same precedence and by the same respective titles, and in the same manner, respectively, as heretofore. Every judge who shall be appointed to fill the place of any other judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the puisne justices and junior barons of the superior courts of common law have been heretofore appointed.

All the judges of the said court shall have in all respects save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction, and shall be addressed in the manner which is now customary in addressing the judges of the superior courts of common law.

The Lord Chief Justice of England for the time being shall be president of the said High Court of Justice in the absence of the Lord Chancellor.

Judicial  
vacancies.

7. The office of any judge of the said High Court of Justice or of the said Court of Appeal may be vacated by resignation in writing under his hand addressed to the Lord Chancellor, without any deed of surrender; and the office of any judge of the said High Court shall be vacated by his being appointed a judge of the said Court of Appeal. The said courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of either of such courts.

Qualifications of  
judges.

8. Any barrister of not less than ten years' standing shall be qualified to be appointed a judge of the said High Court of Justice, and any person who, if this Act had not passed, would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a judge of the High Court of Justice of not less than one year's standing, shall be

qualified to be appointed an ordinary judge of the said Court of Appeal. *Proviso* : No person appointed a judge of either of the said courts shall henceforth be required to take or to have taken the degree of Serjeant-at-Law.

11. Saving of rights and obligations of existing judges.

12. If in any case not expressly provided for by this Act, a liability to any duty or any authority or power not incident to the administration of justice in any court whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any such courts save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty or possessing such authority or power before the passing of this Act.

Extraordinary  
duties of judges.

Any such duty, authority, or power imposed or conferred by any statute, law, or custom in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively and by their respective successors, in the same manner as if this Act had not passed.

13. As to salaries of future judges.

14. As to retiring pensions of future judges of the High Court of Justice, and ordinary judges of the Court of Appeal.

15. As to payment of salaries and pensions.

## PART II.—*Jurisdiction and Law.*

16. The High Court of Justice shall be a superior court of record, and, subject as in this Act mentioned, there shall be transferred to, and vested in the said High Court of Justice, the jurisdiction which at the commencement of this Act was vested in, or capable of being exercised by all or any of the courts following :

Jurisdiction of  
High Court of  
Justice.

(1.) The High Court of Chancery as a common law court, as well as a court of equity, including the jurisdiction of the Master of the Rolls as a judge, or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a common law court.

(2.) The Court of Queen's Bench.

(3.) The Court of Common Pleas at Westminster.

(4.) The Court of Exchequer as a court of revenue, as well as a common law court.

- (5.) The High Court of Admiralty.
- (6.) The Court of Probate.
- (7.) The Court for Divorce and Matrimonial Causes.
- (9.) The Court of Common Pleas at Lancaster.
- (10.) The Court of Pleas at Durham.
- (11.) The courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or of any such commissions.

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which at the commencement of this Act was vested in, or capable of being exercised by all or any one or more of the judges of the said courts respectively sitting in court or chambers, or elsewhere, when acting as judges, or a judge in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge by any statute, and also ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Jurisdiction not  
transferred to  
High Court.

17. There shall not be transferred to or vested in the said High Court of Justice by virtue of this Act,

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same court sitting as a court of appeal in bankruptcy.
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster.
- (3.) Any jurisdiction usually vested in the Lord Chancellor, or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind.
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings to be passed under the Great Seal of the United Kingdom.
- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any college, or of any charitable or other foundation.
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London, or elsewhere in England.

Jurisdiction  
transferred to  
Court of Appeal.

18. The Court of Appeal established by this Act shall be a superior court of record, and there shall be transferred to and vested in such court all jurisdiction and powers of the courts following :

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same court as a court of appeal in Bankruptcy.

- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the County Palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the Duchy and County Palatine of Lancaster, when sitting alone or apart from the Lords Justices of Appeal in Chancery, as a judge of rehearing or appeal from decrees or orders of the Court of the County Palatine of Lancaster.
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries, assisted by his assessors, including all jurisdiction and power of the said Lord Warden, when sitting in his capacity of judge.
- (4.) All jurisdiction and power of the Court of Exchequer Chamber.
- (5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned (a), of Her Majesty's High Court of Justice or of any judges or judge thereof, subject to the provisions of this Act, and to such rules and orders of court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

Appeals from  
High Court.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised except by the said High Court of Justice and the said Court of Appeal respectively as provided by this Act.

Transfer of  
pending busi-  
ness.

No further or other appointment of any judge to any court whose jurisdiction is so transferred shall be made except as provided by this Act.

Provided that in all causes, matters, and proceedings whatsoever, which shall have been fully heard, and in which judgment

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(a) See sects. 45, 47, 49.

shall not have been given, or having been given, shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, &c., after the commencement of this Act, in the name of the same court and by the same judges and officers, and generally in the same manner in all respects, and with the same effect, as if this Act had not passed.

Every judgment, decree, rule, or order, of any court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively in the same manner as if it had been a judgment, &c., of the said High Court or of the said Court of Appeal.

All causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act shall be continued and concluded as follows, viz., in the case of proceedings in error or on appeal, or on proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and as to all other proceedings in and before Her Majesty's High Court of Justice.

The said courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings, as if the same had been commenced in the said High Court of Justice and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded in and before the said courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto) as the said courts respectively may think fit to direct.

Rules as to exercise of jurisdiction.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of court as may be made pursuant to this Act.

Where no special provision is contained in this Act, or in any



such rules or orders of court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts.

24. In every civil cause or matter commenced in the High Court of Justice, law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively, according to the rules following:—

Administration  
of law and  
equity.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a court of equity, the said courts respectively, and every judge thereof, shall give to such plaintiff or petitioner, such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

Equitable  
claims.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said courts respectively, and every judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of this Act.

Equitable  
defence.

(3.) The said courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose

Counter-claim,  
&c.

by the same defendant against the same plaintiff or petitioner ; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court, or any order of the court as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose ; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his defence against such claim as if he had been duly served in the ordinary way by such defendant.

Incidental  
equities.

- (4.) The said courts respectively, and every judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

Prohibitions and  
injunctions.

- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction ; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed either unconditionally or on any terms or conditions, may be relied on by way of defence thereto : Provided that nothing in this Act contained shall disable either of the said courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit, and any person, whether a party or not to any such cause or matter, who would have been entitled if this Act had not passed to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said courts respectively by motion in a summary way for a stay of proceedings in such cause or matter either generally, or so far as may be necessary for the purposes of justice ; and the court shall thereupon make such order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to Legal claims. equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said courts respectively, and every judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law, or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal General powers of High Court and Court of Appeal. respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

25. And whereas it is expedient to take occasion of the union Rules of law. of the several courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned. Be it enacted as follows :

[(1.) *Repealed.*]

(2.) No claim of a *cestui que trust* against his trustee for any Claim against trustee. property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

(3.) An estate for life without impeachment of waste shall Equitable waste. not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right shall expressly appear by the instrument creating such estate.

(4.) There shall not, after the commencement of this Act, be Merger. any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(5.) A mortgagor entitled for the time being to the possession Actions by mortgagors.

or receipt of the rents and profits of any land as to which no notice of his intention to take possession, or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of  
*choses in action.*

- (6.) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal *chose in action*, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or *chose in action* shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or *chose in action* from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor; provided always that if the debtor, trustee, or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled, if he shall think fit, to call upon the several persons making claim thereto, to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Time.

- (7.) Stipulations in contracts as to time or otherwise, which would not, before the [commencement] of this Act, have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity.

Mandamus.  
Injunction.  
Receiver.

- (8.) A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the

court shall think just, and if an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

- (9.) In any cause or proceeding for damages arising out of a Collisions at sea. collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the courts of common law, shall prevail.
- (10.) In questions relating to the custody and education of Infants. infants, the rules of equity shall prevail.
- (11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance Conflict between law and equity. between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

### PART III.—*Sittings and Distribution of Business.*

26. The division of the legal year into terms shall be Abolition of terms. abolished so far as relates to the administration of justice, but in cases in which the terms are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose unless provision is otherwise made.

Subject to rules of court, the High Court of Justice, and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act at any time and at any place for the transaction of business or for the discharge of any duty which by any Act of Parliament or otherwise is required to be discharged during or after term.

27. Until the Queen in Council shall otherwise order, the Vacations. vacations shall be fixed in the same manner and by the same authority as if this Act had not passed. This section shall come into operation immediately upon the passing of the Act.

28. Provision shall be made by rules of court for the hearing in London or Middlesex during vacation by judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of  
judges on circuit.

29. Her Majesty may assign to any judge of the High Court of Justice or other persons usually named in commissions of assize the duty of trying and determining within any place or district specially fixed for that purpose by such commission any causes or matters, or any questions or issues of fact, or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act.

Any commissioner appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him in pursuance of this Act, be deemed to constitute a court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Sittings for trial  
by jury in  
Middlesex and  
London.

30. Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary.

Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London at any place heretofore accustomed or to be hereafter determined by rules of court shall be deemed to constitute a court of the said High Court of Justice.

Divisions of the  
High Court of  
Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any divisional court, or for any judge of a different division from his own), there shall be in the said High Court five divisions, consisting of such number of judges respectively as hereinafter mentioned.

(1.) One division shall consist of the Lord Chancellor, who shall be president thereof, the Master of the Rolls(a), and the Vice-Chancellors of the Court of Chancery, or such

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(a) The Master of the Rolls is now a Judge of the Court of Appeal only.

- of them as shall not be appointed ordinary judges of the Court of Appeal.
- (2.) One other division shall consist of the Lord Chief Justice of England, who shall be president thereof, and such of the other judges of the Court of Queen's Bench as shall not be appointed ordinary judges of the Court of Appeal.
  - (3.) One other division shall consist of the Lord Chief Justice of the Common Pleas, who shall be president thereof, and such of the other judges of the Court of Common Pleas as shall not be appointed ordinary judges of the Court of Appeal. (a)
  - (4.) One other division shall consist of the Lord Chief Baron of the Exchequer, who shall be president thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary judges of the Court of Appeal. (a)
  - (5.) One other division shall consist of two judges who, immediately on the commencement of this Act, shall be the existing judge of the Court of Probate, and of the Court for Divorce and Matrimonial Causes, and the existing judge of the High Court of Admiralty, unless either of them is appointed an ordinary judge of the Court of Appeal. The existing judge of the Court of Probate shall (unless so appointed) be the president of the said division, and, subject thereto, the senior judge of the said division according to the order of precedence under this Act shall be president.

The said five divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any judge of any of the said divisions may be transferred from one to another of the said divisions.

32. Her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court, order that any reduction or increase in the number of divisions of the High Court of Justice, or in the number of the judges of the said High Court, who may be attached to any such division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose.

Such order may provide for the abolition on vacancy of the distinction of the offices of any of the following judges, namely,

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(a) This division has since been abolished.



the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may be reduced, and of the salaries, pensions, and patronage attached to such offices from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such order shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if within such period of thirty days an address is presented to Her Majesty by either House of Parliament praying that the same may not come into operation.

Any such order in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days be of the same force and effect as if it had been herein expressly enacted. *Proviso:* The total number of the Judges of the Supreme Court shall not be reduced or increased by any such order.

Distribution of  
business.

33. Every document by which any cause or matter may be commenced in the said High Court, shall be marked by the name of the division, or with the name of the judge to which, or to whom, the same is assigned.

Assignment of  
certain business  
to certain  
divisions.

34. There shall be assigned (subject to rules of court and orders of transfer) to the Chancery Division of the said court—

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act.

(2.) All causes and matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect to such causes or matters has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from County Courts.

(3.) All causes and matters for any of the following purposes:—

The administration of the estates of deceased persons.

The dissolution of partnerships, or the taking of partnership or other accounts.

The redemption or foreclosure of mortgages.

The raising of portions or other charges on land.

The sale and distribution of the proceeds of property subject to any lien or charge.

The execution of trusts, charitable or private.

The rectification or setting aside, or cancellation of deeds or other written instruments.

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases.



The partition or sale of real estates.

The wardship of infants, and the care of infants' estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said court :

- (1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act.
- (2.) All causes and matters, civil and criminal, which would have been within the exclusive cognisance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court. :

- (1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act.
- (2.) All causes and matters which would have been within the exclusive cognisance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

36. Any cause or matter may at any time and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may, by the like authority, be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought in the first instance to have been assigned. Power of transfer.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of judges of the said High Court, under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Divisions of the said High Court; with power to the Queen to include in any such commission any ordinary judge of the Court of Appeal, or any judge of the Chancery Division to be appointed after the commencement of this Act, or any serjeant-at-law, or any of the Queen's Counsel, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a judge of the said High Court. Sittings in London and Middlesex, and on circuit.

38. As to the judges for the trial of election petitions.

Power of single judge.

39. Any judge of the said High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters as before the passing of this Act might have been heard in court, or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any rules of court to be hereafter made. In such cases any judge sitting in court shall be deemed to constitute a court.

Appeals from inferior courts.

45. All appeals from petty or quarter sessions, from a county court, or from any other inferior court which might, before the passing of this Act, have been brought to any court or judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose pursuant to rules of court, or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court.

The determination of such appeals respectively by such divisional courts shall be final, unless special leave to appeal from the same to the Court of Appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

Cases and points may be reserved.

46. Subject to any rules of court, any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case or point in a case for the consideration of a divisional court, or may direct any case or point in a case to be argued before a divisional court; and any divisional court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench, and the Barons of the Exchequer by the 11 & 12 Vict. c. 78, or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice.

The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said Act: (11 & 12 Vict. c. 78.)

49. No order made by the High Court of Justice or any judge thereof by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal except by leave of the court or judge making such order. Where no appeal.

50. Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any divisional court, or by the judge sitting in court according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal. Discharging orders made in chambers.

51. A judge of the Court of Appeal may, upon the request of the Lord Chancellor, sit and act as a judge of the said High Court, or perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting shall have all the power and authority of a judge of the said High Court. Provision for absence, &c., of judge.

52. In any cause or matter pending before the Court of Appeal any direction incidental thereto not involving the decision of the appeal may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may, at any time during vacation, make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal, or a divisional court thereof. Power of single judge in Court of Appeal.

#### PART IV.—*Trial and Procedure.*

56. Subject to any rules of court and to such right as may now exist to have particular cases submitted to the verdict of a jury any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice, or before the Court of Appeal, may be referred by the court, or by any divisional court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the court, and may (if so adopted) be enforced as a judgment by the court. References and assessors.

The High Court or the Court of Appeal may also in any such cause or matter as aforesaid, in which it may think it expedient so to do, call in the aid of one or more assessors specially

qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the court.

Power to direct trials before referees.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court, in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers, the court or a judge may at any time on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein, to be tried either before an official referee to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties, and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by rules of court and subject thereto in such manner as the court or judge ordering the same shall direct.

Power of referees and effect of their findings.

58. In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the court and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the court or judge ordering such reference or trial, and the report of any referee upon any question of fact on any such trial shall (unless set aside by the court) be equivalent to the verdict of a jury.

Powers of court as to proceedings before referees.

59. With respect to all such proceedings before referees and their reports, the court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively by the Common Law Procedure Act, 1854.

District registries.

60. The Queen may, by order in Council, from time to time direct that there be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and the Queen may thereby appoint that any registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local court, whose jurisdiction is hereby transferred to the said High Court of Justice or from which an

appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

61. All such writs and documents, and all exemplifications and copies thereof purporting to be sealed with the seal of any such district registry shall in all parts of the United Kingdom be received in evidence without further proof thereof. Seal of district registry.

64. Subject to the rules of court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrar when thereunto required ; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment, or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar and recorded in the district registry in such manner as may be prescribed by the rules of court ; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken, and, if necessary, may be recorded in the same district registry. Proceedings to be taken in district registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry, shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court, to the said High Court or to a judge in chambers of the division of the said High Court, to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court ; and the court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall, upon receipt of such order, be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London ; or the court or judge may Removal of proceedings from district registries.

thereupon direct that the proceedings may continue to be taken in such district registry.

Accounts and  
inquiries in  
district registry.

66. The court or any judge of the division to which any cause or matter pending in the said High Court is assigned, may, if it shall be thought fit, order that any books or documents may be produced, or any accounts taken or inquiries made in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the court, as to the court shall seem fit.

County Courts  
Act, 1867.

67. The provisions contained in the County Courts Act, 1867, sects. 5, 7, 8, and 10 (a), shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

Council of  
judges.

75. A council of the judges of the Supreme Court shall assemble once at least in every year to consider the operation of this Act and of the rules of court for the time being in force, &c., and shall report to one of the principal Secretaries of State as to proposed amendments, alterations, &c.

Application of  
Acts of Parlia-  
ment.

76. All Acts of Parliament relating to the several courts and judges whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any courts or judges are mentioned or referred to, shall be construed and take effect so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice, or the said Court of Appeal, and the judges thereof respectively, as the case may be, had been named therein instead of such courts or judges whose jurisdiction is so transferred respectively.

#### PART V.—*Officers and Offices.*

77. As to the transfer of the staff of Officers of the existing courts to the Supreme Court.

78. As to officers of the Courts of Pleas at Lancaster and Durham.

79. As to the personal officers of the judges.

Commissioners  
to administer  
oaths.

82. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice, shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

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(a) See post "Statutes Relating to the County Courts."

83. There shall be attached to the Supreme Court permanent Official referees. officers to be called official referees, for the trial of such questions as shall, under the provisions of this Act, be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the Presidents of the Divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorised by any order of the said High Court or of the Court of Appeal.

84. As to the duties, appointment, and removal of officers of the Supreme Court.

85. As to salaries and pensions of officers.

86. As to patronage not otherwise provided for.

87. From and after the commencement of this Act all persons Solicitors. admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any court the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed.

All persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of, or been by law empowered to practice in any such courts, shall be entitled to be admitted, and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might, previously to the passing of the Act, have exercised in respect of any solicitor or attorney admitted to practise therein.

#### PART. VI.—*Jurisdiction of Inferior Courts.*

88. Power to the Queen from time to time by Order in Council Power to confer jurisdiction on inferior courts. to confer on any inferior court of civil jurisdiction, the same



jurisdiction in equity and in admiralty, respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Powers of  
inferior courts  
having equity  
and Admiralty  
jurisdiction.

89. Every inferior court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained) in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

Counter-claim in  
inferior court.

90. Where in any proceeding before any such inferior court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided that the High Court or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, may order that the whole proceeding be transferred from such inferior court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer of the inferior court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Rules of law.

91. The several rules of law enacted and declared by this Act, shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts.

#### PART VII.—*Miscellaneous Provisions.*

Saving as to  
circuits, &c.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuit of the judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise.

Interpretation of  
terms.

100. In the construction of this Act unless there is anything



in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

"Lord Chancellor" shall include Lord Keeper of the Great Seal.

"The High Court of Chancery" shall include the Lord Chancellor.

"The Court of Appeal in Chancery" shall include the Lord Chancellor as a judge on rehearing or appeal.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the record.

"Matter" shall include every proceeding in the court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown Cases Reserved" shall mean such questions of law reserved in criminal trials as are mentioned in the Act of

the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

### *The Supreme Court of Judicature Act, 1875.*

38 & 39 VICT. c. 77.

Short title, and construction.

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and together with the principal Act, may be cited as "The Supreme Court of Judicature Acts, 1873 and 1875," and this Act may be cited separately as "The Supreme Court of Judicature Act, 1875."

Commencement.

2. This Act, except any provision thereof, which is declared to take effect before the commencement of this Act, shall commence and come into operation on the 1st day of November, 1875.

Constitution of Court of Appeal.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be [four] *ex-officio* judges thereof, and also so many ordinary judges, as Her Majesty shall from time to time appoint.

The *ex-officio* judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, [and the President of the Probate, Divorce, and Admiralty Division.]

The Lord Chancellor may by writing addressed to the President of [either or both] of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of any additional judge from such division or divisions (not being *ex-officio* judge or judges of the Court of Appeal) at the sittings of the Court of Appeal, and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly,

Every additional judge, during the time that he attends the sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said Court, or to have ceased to be a judge of the division of the High Court of Justice to which he belongs.

No judge of the said Court of Appeal shall sit as a judge on

the hearing of an appeal from any judgment or order made by himself, or made by any divisional court of the High Court of which he was a member.

Whenever the office of any ordinary judge of the Court of Appeal becomes vacant a new judge may be appointed thereto by Her Majesty by Letters Patent.

5. All the judges of the High Court of Justice, and the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No judge of either of the said courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be judge of either of the said courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Tenure of office of judges.

Judges not to sit in the House of Commons.

Oaths.

6. The Lord Chancellor shall be President of the Court of Appeal; the other *ex-officio* judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such judges.

Precedence of judges.

The judges of the High Court of Justice who are not also judges of the Court of Appeal shall rank next after the judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing judges), according to the priority of their respective appointments.

7. Any jurisdiction usually vested in the Lord Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

Jurisdiction of Lords Justices in respect of lunatics.

8. Every judge of the Probate, Divorce, and Admiralty Division

Judges of Probate, &c.,

Division to share  
duties.

of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

Administration  
of assets.

10. In the administration by the court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities, and future, and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act. (a)

Provision as to  
option for any  
plaintiff (subject  
to rules) to  
choose in what  
division he will  
sue.

11. Subject to any rules of court and to the provisions of the principal Act, and this Act, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided that—

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken subject to any rules of court and to the power of transfer) in the division of the said High Court, to which such cause or matter is for the time being attached; and
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court

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(a) This section does not interfere with an executor's right of retainer: (*Lee v. Nuttall* (No. 2), 41 L. T. 863; 12 Ch. Div. 61; 48 L. J. 616, Ch.) A registered judgment still has priority over other creditors: (*Smith v. Morgan*, 5 C. P. Div. 837; *Winehouse v. Winehouse*, 46 L. T. 862; *Van Ghelme v. Nevinckx*, 47 L. T. 46.)

to which, according to the rules of court, or the provisions of the principal Act or this Act, the same ought not to be assigned, the court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the court or any judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said court to which such cause or matter ought to have assigned; and

- (3.) Subject to rules of court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

12. Every appeal to the Court of Appeal shall, when the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said court sitting together.

Sittings of Court of Appeal.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section, the Court of Appeal may sit in two divisions at the same time.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by order in council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

District registrars.

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be

deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district or for any such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

**Solicitors.**

14. The registrar of attorneys and solicitors in England shall be called the registrar of solicitors.

**Appeal from  
inferior court of  
record.**

15. It shall be lawful for Her Majesty from time to time, by order in council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

17. Provisions as to making, altering, and annulling rules of court.

**Provision as to  
rules of Probate,  
Divorce and  
Admiralty  
Courts.**

18. All rules and orders of court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of court made after the commencement of this Act.

The present judge of the Probate Court and of the Court for Divorce and Matrimonial Causes, shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by 20 & 21 Vict. c. 77, s. 30, and the said judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by 20 & 21 Vict. c. 85, s. 53.

**Provision as to  
criminal  
procedure.**

19. Subject to any rules of court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

20. Nothing in this Act, or in rules of court to be made under this Act, save as far as relates to the power of the court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Rules of evidence, &c.

21. Save as by the principal Act or this Act, or by any rules of court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act, or with any rules of court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Provision for saving of existing procedure of courts when not inconsistent with this Act or rules of court.

22. Whereas by section forty-six of the principal Act it is enacted that "any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a divisional court may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case or point in a case to be argued before a divisional court:" Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues: Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

Nothing in principal Act to prejudice right to have issues submitted, &c.

25. Orders and rules are to be laid before Parliament, and may be annulled on address to the Queen by either House.

26. (6.) Any person who forges or counterfeits any such stamp (a) or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

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(a) *I.e.* any stamp for the payment of fees under the Judicature Acts.



*The Appellate Jurisdiction Act, 1876.*

39 &amp; 40 VICT. c. 59.

Cases in which  
appeal lies to  
House of Lords.

3. Subject as in this Act mentioned an Appeal shall lie to the House of Lords from any order or judgment of any of the courts following; that is to say,

- (1.) Of Her Majesty's Court of Appeal in England; and
- (2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and
- (3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

Form of appeal  
to House of  
Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be revived before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

Requisite  
number of Lords  
of Appeal.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

- (1.) The Lord Chancellor of Great Britain for the time being; and
- (2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and
- (3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

6. As to appointment of Lords of Appeal in Ordinary by Her Majesty.

Hearing and  
determination of  
appeals during  
prorogation of  
Parliament.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking



their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

9. If on the occasion of a dissolution of Parliament Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under Her sign manual, to authorise the Lords of Appeal in the name of the House of Lords to hear and determine appeals during the dissolution of Parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may in the name of the House of Lords exercise the jurisdiction of the House of Lords accordingly.

Hearing and determination of appeals during dissolution of Parliament.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

Fiat of Attorney-General.

11. After the commencement of this Act, error shall not lie to the House of Lords, and an appeal shall not lie from any of the courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

Procedure under Act to supersede all other procedure.

17. On and after the first day of December, one thousand eight hundred and seventy-six, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as practicable and convenient, be heard, determined, and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the judge before whom the trial or hearing of the cause took place: Provided, nevertheless, that divisional courts of the High Court of Justice may be held for the transaction

Disposal of business before a single judge.

of any business which may for the time being be ordered by the rules of court to be heard by a divisional court ; and any such divisional court when held shall be constituted of two judges of the court and no more, unless the president of the division to which such divisional court belongs, with the concurrence of the other judges of such division, or a majority thereof, is of opinion that such divisional court should be constituted of a greater number of judges than two, in which case such court may be constituted of such number of judges as the president, with such concurrence as aforesaid, may think expedient ; nevertheless, the decisions of a divisional court shall not be invalidated by reason of such court being constituted of a greater number than two judges.

Attendance of  
judges of High  
Court on Court  
of Appeal.

19. Where a judge of the High Court of Justice has been requested to attend as an additional judge at the sittings of the Court of Appeal under section four of the Supreme Court of Judicature Act, 1875, such judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

No appeal in  
certain cases.

20. Where by Act of Parliament it is provided that the decision of any court or judge the jurisdiction of which court or judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any judge thereof, to Her Majesty's Court of Appeal.

Appointment of  
deputy by  
district  
registrar.

22. A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor, and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorised or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed : Provided always, that in no case such appointment shall be made for a period exceeding three months.

### *The Supreme Court of Judicature Act, 1877.*

40 VICT. c. 9.

Additional  
judge.

By this Act power is given to Her Majesty to appoint an additional judge of the High Court of Justice. Such judge to be in the same position as if he had been appointed a puisne judge of the High Court under the Judicature Acts, and (subject to power of transfer) to be attached to the Chancery Division.

Style of judges.

It is also enacted that the ordinary judges of the Court of

Appeal shall be styled "Lords Justices of Appeal," and the judges of the High Court of Justice (other than the Presidents of Divisions) shall be styled "Justices of the High Court."

*The Supreme Court of Judicature (Officers) Act, 1879.*

42 & 43 VICT. c. 78.

*Preliminary.*

1. This Act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those Acts as "The Supreme Court of Judicature Acts, 1873 to 1879," and separately as "The Supreme Court of Judicature (Officers) Act, 1879." Construction and short title.

2. This Act shall, except where it is otherwise expressed, come into operation on the 28th October, 1879, which day is in this Act referred to as the commencement of this Act. Commencement.

3. In this Act "existing" means existing at the commencement of this Act. "Existing."

*Central Office.*

4. There shall be established a Central Office of the Supreme Court of Judicature.

5. There shall be concentrated in and amalgamated with the Central Office the following offices, namely: Certain offices amalgamated with Central Office.

The record and writ clerk's office;

The enrolment office;

The report office;

The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;

The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;

The Crown office of the Queen's Bench Division;

The Queen's Remembrancer's office;

The office of the Registrar of certificates of acknowledgments of deeds by married women;

The office of the Registrar of Judgments; and

such other offices of the Supreme Court as may from time to time be amalgamated with the Central Office by rules of court.

6. There shall be transferred to the Central Office,—

(a.) The existing record and writ clerks;

The existing clerk of enrolments;

The existing clerks in the report office;

The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;

The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions.

Transfer of certain officers to Central Office.

The existing Queen's Remembrancer ;  
 The existing Queen's coroner and attorney, and the  
 existing master of the Crown office other than the  
 Queen's coroner and attorney ;  
 The existing registrar of certificates of acknowledgments  
 of deeds by married women ; and  
 The existing registrar of judgments ;  
 with their respective clerks and messengers, or the clerks and  
 messengers employed in their respective offices ;

(b.) Such of the existing officers employed under the regis-  
 trars of the Probate, Divorce, and Admiralty Division  
 as the Judges of that Division respectively select as  
 necessary for the performance of the duties to be  
 performed in the Central Office ; and

(c.) Such other officers of and persons employed in the  
 Supreme Court or the offices thereof as are from time  
 to time transferred to the Central Office by rules of court.

Central Office to  
 be under control  
 of masters of  
 Supreme Court.

7. The Central Office shall be under the control and superin-  
 tendence of officers called masters of the Supreme Court of  
 Judicature.

Provided that the existing clerk of enrolments shall, as long  
 as he continues to hold that office, retain his control and  
 superintendence over the business heretofore performed in his  
 office and over the persons for the time being employed in the  
 performance of that business.

First masters of  
 Supreme Court.

8. (1.) The first masters of the Supreme Court of Judicature  
 shall be—

The existing masters of the Queen's Bench, Common Pleas,  
 and Exchequer Divisions ;

The existing Queen's coroner and attorney ;

The existing master of the Crown office other than the  
 Queen's coroner and attorney :

The existing record and writ clerks ; and

The existing associates in the Queen's Bench, Common Pleas,  
 and Exchequer Divisions,

(2.) As to the salaries of the first masters of the Supreme  
 Court.

(3.) A vacancy in the office of any master of the Supreme  
 Court other than a master being Queen's coroner and attorney or  
 master of the Crown Office, shall not be filled until the number of  
 masters is reduced to eighteen.

Appointment  
 and removal of  
 officers of  
 Central Office.

9. (1.) The right of filling any vacancy in the office of master  
 of the Supreme Court, or in any clerkship in the Central Office,  
 shall, subject as in the next sub-section mentioned, be vested in  
 the Lord Chief Justice of England and the Master of the Rolls  
 in rotation and in such order as they by agreement among  
 themselves determine.

(2.) The right of filling any vacancy in the office of Queen's coroner and attorney and of master in the Crown Office shall be vested in the Lord Chief Justice of England, and the persons appointed to these offices respectively shall be by virtue of their appointment masters of the Supreme Court.

(3.) Subject as aforesaid, the right of filling any vacancy in, and of making any new appointment in or for the purposes of, the Central Office shall be vested in the Lord Chancellor with the concurrence of the Treasury.

(4.) Any officer of the Central Office may be removed by a majority of the judges mentioned in this section, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

10. A person shall not be qualified to be appointed a master of the Supreme Court unless he is or has been a practising barrister or solicitor of five years' standing, or has practised for five years as a special pleader or as a special pleader and barrister ; but nothing in this section shall affect the qualification of any existing officer of the Supreme Court to be appointed to any office dealt with by this Act. Qualification of masters of Supreme Court.

11. Every master of the Supreme Court shall hold office during good behaviour. Tenure of office.

12. (1.) The business to be performed in the Central Office shall, subject to the rules of court, comprise all the business performed in the offices by or in pursuance of this Act amalgamated with the Central Office, and shall be distributed among the several officers of the Central Office, in such manner as may be directed by rules of court. Business of Central Office.

(2.) The several officers of the Central Office shall be interchangeable one with another, and shall be capable of performing and liable to perform the duties of each other in any department of the office, and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of court, subject to this qualification, that the duties required to be performed by any officer transferred to the Central Office by or in pursuance of this Act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

(3.) Subject as aforesaid, all officers of the Central Office shall continue to perform the duties heretofore performed by them in their respective offices and to have and exercise the powers heretofore vested in them, in the same manner, as nearly as may be, as if this Act had not passed.

13. The clerks employed in the Central Office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying clerks, or in such other manner as the Lord Chancellor, Classification of clerks of Central Office.

with the concurrence of the Treasury, from time to time directs.

Abolition of  
certain offices.

14. (1.) The offices specified in the first part of the first schedule of this Act are hereby abolished as from the commencement of this Act.

(2.) Each of the offices specified in the second part of the first schedule to this Act shall be abolished on the occurrence of the next vacancy therein.

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the first schedule to this Act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's Remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows :

(a.) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions shall collectively rank as senior to the other first masters of the Supreme Court ;

(b.) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any court of which the jurisdiction has been transferred to the Supreme Court.

#### FIRST SCHEDULE.

##### FIRST PART.

*Offices to be abolished as from commencement of Act.*

The offices of—

Record and Writ Clerk :

Master in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice :

Associate in the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice :

##### SECOND PART.

*Offices to be abolished on next vacancy.*

The offices of—

Clerk of Enrolments :

Clerk of Petty Bag.

##### THIRD PART.

*Offices to be filled on vacancy by the Senior Master of the Supreme Court.*

The offices of—

Queen's Remembrancer :

Registrar of Certificates of Acknowledgments of Deeds by Married Women :

Registrar of Judgments.

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*The Supreme Court of Judicature Act, 1881.*

44 & 45 VICT. c. 68.

2. The present and every future Master of the Rolls shall cease to be a judge of the High Court of Justice, but shall continue to be a judge of the Court of Appeal.

3. The number of ordinary judges of the Court of Appeal shall henceforth be five.

4. The president for the time being of the Probate, Divorce, and Admiralty Division shall be an *ex officio* judge of the Court of Appeal.

5. Power to appoint a new judge of High Court instead of the Master of the Rolls.

8. The exception in the 40 & 41 Vict. c. 9 (a) of presidents of divisions from the enactment that the judges of the High Court shall be styled justices of the High Court shall not apply to future presidents of the Probate, Divorce, and Admiralty Division.

9. All appeals which under sect. 55 of 20 & 21 Vict. c. 85 (b), *Divorce appeals* or under any other Act might be brought to the full court established by the said first mentioned Act, shall henceforth be brought to the Court of Appeal, and not to the said full court.

The decisions of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and save as aforesaid no appeal shall lie to the House of Lords under the said Acts,

Subject to any order made by the House of Lords in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal, if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which such order may be founded, shall not have appealed therefrom.

11. A judge who was not present and acting as a member of a *“Member of divisional court.”* divisional court at the time when any decision which may be appealed from was made, or at the argument of the case decided,

(a) See page 422.

(b) See *post*, title “Divorce Acts.”

shall not, for the purposes of sect. 4 of 38 & 39 Vict. c. 77 (a), be deemed to be or to have been a member of such divisional court.

12. In cases of urgency one judge may officiate for another.

13. As to judges for trial of election petitions.

15. Five or more judges of the High Court may sit to hear criminal appeals, of whom the Lord Chief Justice of England is to be one, unless prevented by illness or otherwise.

District  
registrars.

22. A solicitor of the Supreme Court of not less than five years' standing may be appointed a district registrar of the High Court.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceedings whatsoever in the district registry of which he is registrar.

25. The Chief Justice of England is to have the powers of the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer.

## STATUTES RELATING TO THE CHANCERY DIVISION.

*An Act to make further Provision for the Administration of Justice.*

5 VICT. c. 5.

Restraining  
order.

4. The [Chancery Division] may, upon the application of any party interested, by motion or petition, in a summary way, without [action] restrain the governor and company of the Bank of England or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds or any stock or shares in any public company which may be standing in the name of any person or body politic or corporate in the books of the governor and company of the Bank of England, or in the books of any such public company, or from paying any dividend due or to become due thereon. *Proviso:* The court may, on the application of any party interested, discharge or vary such order and award such costs as the court shall think fit.

*The Court of Chancery (Officers) Act, 1867.*

30 & 31 VICT. c. 87.

Lunacy.

13. Jurisdiction in lunacy may be exercised by either of the Lords Justices alone acting or sitting separately.

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(a) See page 414.



*The Court of Chancery (Funds) Act, 1872.*

35 &amp; 36 VICT. c. 44.

4. On the commencement of this Act the office of the Paymaster-General. Accountant-General of the Court of Chancery shall be abolished, and the Paymaster-General shall perform all the duties and exercise all the powers and authorities heretofore performed by or vested in the Accountant-General.

6. All Acts of Parliament, &c., shall, subject to the provisions of this Act, be construed as if the Paymaster-General were therein named in the place of the Accountant-General.

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STATUTES RELATING TO THE QUEEN'S  
BENCH DIVISION.

*An Act for Determining Differences by Arbitration.*

9 WILL. 3, c. 15.

1. Merchants, traders, and others desiring to end any con- Submission to  
troversy, suit, or quarrel for which there is no other remedy, but award may be  
by personal action or suit in equity may by arbitration agree made a rule of  
that their submission of their suit to the award of any person court.  
or persons may be made a rule of court, and may insert such  
agreement in their submission, which agreement being so made  
and inserted, shall or may, upon producing an affidavit thereof  
made by one of the witnesses thereto in the court of which  
the same is agreed to be made a rule, and reading and filing  
the said affidavit in court, be entered of record in such court,  
and a rule shall thereupon be made that the parties shall  
submit to and be concluded by such arbitration; and the party  
neglecting or refusing to perform and execute the same shall  
be guilty of contempt of court.

2. Any arbitration procured by corruption or undue means Corrupt  
may be set aside on complaint being made in the court where arbitration.  
the rule is made for submission to such arbitration before the  
last day of the next term after such arbitration made and  
published to the parties.

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*An Act for the further Amendment of the Law and the  
better Advancement of Justice. (a)*

3 &amp; 4 WILL 4, c. 42.

39. The power and authority of any arbitrator appointed by Submission to  
or in pursuance of any rule of court, or judge's order, or order of arbitration not  
to be revocable.

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(a) For other sections of this Act, see pp. 135, 190, 362.

Nisi Prius, in any action, or by or in pursuance of any submission to reference containing an agreement that the same shall be made a rule of court, shall not be revocable by any party to such reference without the leave of the court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a judge, and the arbitrator shall proceed notwithstanding such revocation.

Witnesses.

40. The court or a judge may compel the attendance of witnesses before arbitrators, or the production of documents. Conduct money shall be paid, and witnesses need not produce documents which would be privileged on a trial.

41. Power to arbitrators under a rule of court to administer an oath to witnesses.

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*An Act for abolishing Arrest on Mesne Process, &c.*

1 & 2 VICT. c. 110. (a)

Elegit.

11. Power to the sheriff to deliver the whole of the lands of a debtor to a judgment creditor under a writ of elegit instead of a moiety as formerly.

Sheriff may  
seize money,  
bills, notes, &c.

12. The sheriff may, under a *fi. fa.*, seize any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to the judgment debtor, and shall pay to the judgment creditor any such money or bank notes, or a sufficient part thereof; and shall hold any such cheques, &c., as security for the judgment debt, or the balance remaining due, and may sue in the name of such sheriff for the recovery of the sums secured thereby, when the time for payment shall have arrived; and the payment to the sheriff by the party liable on any such cheque, &c., or the recovery and levying execution against him shall discharge him, to the extent thereof, from his liability on any such cheque, &c.; and such sheriff shall pay to the judgment creditor the money so recovered, or such part thereof as shall be sufficient to discharge the amount of levy. The balance (if any) after payment of the sheriff's expenses shall be paid to the judgment debtor. *Proviso:* The sheriff, before suing as aforesaid, may require the judgment creditor to give security for the costs of the action by bond with two sufficient sureties.

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*The Railway Clauses Consolidation Act, 1845.*

8 VICT. c. 20.

Service on rail-  
way company.

138. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon a railway company,

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(a) For other sections of this Act, see p. 139.

may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally, to the secretary, or in case there be no secretary, then by being given to any one director of the company.

*The Common Law Procedure Act, 1854.*

17 & 18 VICT. c. 125. (a)

3. If it be made to appear at any time after the issuing of the writ to the satisfaction of the court or judge upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, such court or judge may upon such application, if they or he think fit, decide such matter in a summary manner, or order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Power to court or judge to direct arbitration before trial

4. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge upon the consent of both parties as hereinbefore provided, such court or judge may direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrators as conclusive.

Special case may be stated or issue of fact tried.

5. The arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, may state his award as to the whole or any part thereof in the form of a special case for the opinion of the court; and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

Arbitrator may state special case.

6. If upon the trial of any issue of fact by a judge under this Act, it shall appear to the judge that the questions arising

Power to judge at the time of trial to direct arbitration.

(a) For other sections of this Act, see *post*, title "Statutes Relating to Evidence and Witnesses."

thereon involve matter of account which cannot conveniently be tried before him, he may, at his discretion, order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, upon such terms as to costs and otherwise as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings  
upon arbitration.

7. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby, or by the submission or document authorising the reference, be conducted in like manner, and subject to the same rules and enactments as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

Power to remit.

8. In any case where reference shall be made to arbitration as aforesaid, the court or a judge may at any time, and from time to time, remit the matters referred, or any or either of them, to the reconsideration and redetermination of the arbitrator, upon such terms as to costs and otherwise as to the said court or judge may seem proper.

Application to  
set aside award.

9. All applications to set aside any award made on a compulsory reference under this Act, shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term(a); and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Enforcing  
award.

10. Any award made on a compulsory reference under this Act, may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

Where action  
brought by one  
party after all  
have agreed to  
arbitration.

11. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future difference between them or any of them, shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so

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(a) See, however, now, O. LXIV., r. 14.

agreed to be referred, or any of them, the court in which action or suit is brought, or a judge thereof on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be, or ought not to be, referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join or concur in all acts necessary and proper for causing such matters so to be decided by arbitration, may make a rule or order staying all proceedings in such action or suit, on such terms as to costs or otherwise as to such court or judge may seem fit. *Proviso*: Any such rule or order may at any time afterwards be discharged or varied as justice may require.

12. If in any case of arbitration the document authorising the reference provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator, or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorising the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, any judge of a Superior Court may, on summons being taken out by the party having served such notice, appoint an arbitrator, umpire, or third arbitrator, as the case may be, who shall respectively have the like power to act in the reference and make an award as if appointed by consent of all parties.

On failure of parties or arbitrators, judge may appoint arbitrator or umpire.

13. When the reference is or is intended to be to two arbitrators, one appointed by each party, either party may in case of the death, refusal to act, or incapacity of any arbitrator appointed by him, substitute a new arbitrator, unless the document authorising the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall

Where reference is to two arbitrators and one party fails to appoint.

have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference; and an award made by him shall be binding on both parties, as if the appointment had been by consent. *Proviso* : The court or a judge may revoke such appointment on such terms as shall seem just.

Arbitrators may  
appoint umpire.

14. When the reference is to two arbitrators, and the terms of the document authorising it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Time for making  
award.

15. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party; but the parties may by consent in writing enlarge the time for making the award; and the Superior Court of which such submission, document, or order is or may be made a rule or order, or any judge thereof, may, for good cause to be stated in the rule or order for enlargement, from time to time enlarge the time for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed he may enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party, or to the umpire, a notice in writing stating that they cannot agree.

Rule to deliver  
possession of  
land.

16. When any award made on any such submission, document, or order of reference as aforesaid, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, the court of which the document authorising the reference is or is made a rule or order, may order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession thereof claiming under or put in possession by him since the making of the document authorising the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award; and such rule or order to deliver possession shall

have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff, as on a judgment in ejectment.

17. Every agreement or submission to arbitration by consent, whether by deed or writing not under seal, may be made a rule of any one of the Superior Courts of law or equity on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that court only; and if when there is no such provision a case be stated in the award for the opinion of one of the Superior Courts, and such court be specified in the award, and the document authorising the reference have not, before the publication of the award to the parties, been made a rule of court, such document may be made a rule only of the court specified in the award; and when in any case the document authorising the reference is or has been made a rule or order of any one of such Superior Courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

Agreement or submission in writing may be made rule of court, unless contrary intention appear

### *The Common Law Procedure Act, 1860.*

23 & 24 VICT. c. 126.

1. In the case of an ejectment for a forfeiture brought for non-payment of rent, the court or a judge shall have power upon rule or summons to give relief in a summary manner, but subject to appeal, upon the same terms and conditions as the [Chancery Division].

Relief against forfeiture.

22. The provisions of the 19 & 20 Vict. c. 108, relating to replevin, shall apply to all cases of replevin in like manner as to the cases of replevin of goods distrained for rent or damage feasant.

Replevin.

## STATUTES RELATING TO THE PROBATE AND DIVORCE COURTS.

### PROBATE ACTS.

#### *The Court of Probate Act, 1857.*

20 & 21 VICT. c. 77.

4. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters

Testamentary jurisdiction to be exercised by Court of Probate



of administration of the effects of deceased persons vested in any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall, except as in this Act mentioned, be exercised in her name in a court to be called the Court of Probate.

Rules of  
evidence.

33. The rules of evidence observed in the Superior Courts of common law shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

Appeal.

39. Any person aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords (a), provided that no appeal from any interlocutory order shall be made without leave of the court, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall also be considered as under appeal.

District  
registries.

46. Probate of a will or letters of administration may be granted in common form by district registrars, if it shall appear by affidavit of the person applying for the same that the testator or intestate had at the time of his death a fixed place of abode within the district.

47. Such affidavit shall be conclusive for the purpose of authorising the grant, and shall not be impeached by reason that the testator or intestate had no such fixed place of abode.

48. The district registrar shall not grant probate or administration in cases of contention until the contention is terminated, or in which it appears to him that the same ought not to be granted in common form.

Probate or office  
copy to be  
evidence of will  
in actions affect-  
ing real estate,  
unless, &c.

64. In any action where it would have been necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party ten days, at least, before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence, in proof of the devise or other testamentary disposition, the probate of the said will or the letters of administration with the will annexed, or a copy thereof, stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will, and of its validity and contents, notwithstanding the same may not have been proved in solemn form or have been otherwise declared valid in a contentious case, unless the party receiving such notice shall,

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(a) An intermediate appeal may be made to the Court of Appeal: (*Sugden v. Lord St. Leonards*, 1 P. Div. 154.)



within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

73. Where a person shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this Act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration to the person who if this Act had not been passed would by law have been entitled to a grant thereof, but it shall be lawful for the court in its discretion to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct, and every such administration may be limited as the court shall think fit.

Power to court to appoint administrator.

77. Payments *bond fide* made to or by the executor or administrator under any probate or administration afterwards revoked shall be valid.

Payments under probate, &c., revoked.

81. Persons to whom grants of administrations shall be committed shall give a bond to the judge of the Court of Probate with one or more sureties if required, conditioned for duly collecting, getting in, and administering the personal estate of the deceased.

Administration bond.

82. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable.

Penalty.

83. The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount

Assignment of bond.

recoverable in respect of any breach of the condition of the said bond.

*Court of Probate Act, 1858.*

21 & 22 VICT. c. 95.

Judge may sit in chambers.

3. The judge of the Court of Probate may sit in chambers, provided that no question shall be heard in chambers which either party shall require to be heard in open court.

5. The judge in chambers shall have the same power with respect to business to be brought before him as if sitting in open court.

County Courts.

10. By this section jurisdiction in contentious business is given to the County Courts in cases where the personalty is under 200*l.*, and the deceased was not entitled to real estate to the value of 300*l.* or upwards.

Vesting of personalty before administration.

19. After the death of a person dying intestate, and before grant of administration, the personal estate shall be vested in the judge of the Court of Probate. (a)

*Customs and Inland Revenue Act, 1880.*

43 VICT. c. 14.

PART III.—*Stamps.*

11. Power to the Commissioners of Inland Revenue to commute legacy duty or succession duty presumptively payable in certain cases.

Discharge of executor, &c., from claim to duty on distribution of fund.

12. When an executor, administrator, or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund. Such certificate shall not in any way affect the liability of any person other than the person in whose favour it is expressed to be given.

Where personal estate less than 100*l.*

13. Where it appears upon an examination of the account rendered to the Commissioners of Inland Revenue that the value of the whole of the personal estate of any person dying after the

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(a) Who is now the President of the Probate, Divorce, and Admiralty Division.

passing of this Act does not amount to the sum of one hundred pounds, no legacy duty shall be charged in respect thereof or of any portion thereof.

*Customs and Inland Revenue Act, 1881.*

44 VIOT. c. 12.

PART III.—*Stamps.*

*As to Probate and Legacy Duties, and Duties on Accounts.*

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration, shall not be payable upon probates or letters of administration granted on and after the 1st June, 1881; and on and after that day in substitution for such duties there shall, save as is hereinafter expressly provided, be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration, the stamp duties hereinafter specified; (that is to say),

Grant of duties in respect of probate and letters of administration.

Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of 100*l.*, and not above the value of 500*l.*.....

DUTY.

At the rate of one pound for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

Where such estate and effects shall be above the value of 500*l.*, and not above the value of 1000*l.* ...

At the rate of one pound five shillings for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

Where such estate and effects shall be above the value of 1000*l.* ...

At the rate of three pounds for every full sum of 100*l.*, and for any fractional part of 100*l.*, over any multiple of 100*l.*

28. On and after the 1st June, 1881, in the case of a person dying domiciled in any part of the United Kingdom, it shall be

Power to deduct debts and funeral expenses

where deceased  
died domiciled in  
the United  
Kingdom.

lawful for the person applying for the probate or letters of administration to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

As to forms of  
affidavit.

29. The affidavit to be required or received from any person applying for probate or letters of administration shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act.

Probate or letters  
of administra-  
tion to bear a  
certificate in lieu  
of stamp duty.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

Provision for  
return of duty  
overpaid.

31. If at any time after the grant of probate or letters of administration, and during the administration of the estate, the value mentioned in the certificate of the officer of the court shall be found to exceed the true value of the personal estate and effects of the deceased, or if at any time within three years after the grant, or within such further period as the Commissioners of Inland Revenue may allow, it shall appear that no

amount or an insufficient amount was deducted on account of debts and funeral expenses, it shall be lawful for the said commissioners, upon proof of the facts to their satisfaction, to return the amount of stamp duty which shall have been overpaid, and to cause a certificate to be written by an authorised officer on the probate or letters of administration setting forth such true value, or, as the case may be, the amount, or corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

32. If at any time it shall be discovered that the personal estate and effects of the deceased were at the time of the grant of probate or letters of administration of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly stamped for the amount which, with the duty (if any), previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said commissioners interest upon such amounts at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said commissioners may in the circumstances think proper.

Provision for payment of further duty.

The Commissioners of Inland Revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorised officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the court.

33. (1.) Where the whole personal estate and effects of any person dying on or after the 1st June, 1881 (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration to deliver to the proper officer of the court, or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum

Provisions as to obtaining probate, &c., where gross value of estate does not exceed 300*l.*

of fifteen shillings for fees of court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce, and Admiralty Division, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the president or judge of the division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.

Provision in case of subsequent discovery that the value of estate exceeded 300l.

35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

Relief from legacy duty in cases under 300l.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit in conformity with this Act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit relates.

Power to commissioners to require explanations and proof in support of affidavit.

37. It shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of probate or letters of administration, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit as the case may seem to them to require.

38. (1.) Stamp duties at the like rates as are by this Act charged on affidavits shall be charged and paid on accounts delivered of the personal or movable property to be included therein according to the value thereof. Grant of duties on account of certain property.

(2.) The personal or movable property to be included in an account shall be property of the following descriptions, viz. :—

- (a.) Any property taken as a *donatio mortis causâ* made by any person dying on or after the 1st June, 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bond fide* made three months before the death of the deceased.
- (b.) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.
- (c.) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or movable property of a description to be included in an account according to the preceding section shall, upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property duly Delivery of accounts on oath.



stamped as required by this Act. Any officer authorised by the commissioners for the purpose may administer the oath.

Double duty payable in case of default.

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy, or succession duties.

Cesser of legacy and succession duties at the rate of one per cent. in certain cases.

41. In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or account, in conformity with this Act, the duty at the rate of one pound per centum imposed by the Act of the 55 Geo. 3, c. 184, (a) shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or account, in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty, 1853 (b), shall not be payable.

Charge of legacy duty on legacies not amounting to 20%.

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880 (c), every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the 1st June, 1881, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said Act of the 55 Geo. 3, c. 184, as modified by this Act.

Power to commissioners to accept composition for legacy duty under a will.

43. It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

If the commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

(a) *Ante*, p. 174.

(b) *Ante*, p. 355.

(c) *Ante*, p. 438.



DIVORCE ACTS.

*An Act to Amend the Law Relating to Divorce and Matrimonial Causes in England.*

20 & 21 VICT. c. 85.

6. Jurisdiction in all matters matrimonial (except in respect of marriage licences) shall be exercised by "The Court for Divorce and Matrimonial Causes."

Jurisdiction.

7. A decree for a judicial separation may be pronounced instead of a decree for a divorce *à mensa et thoro*, and with the same force and consequences.

Judicial separation.

9. The judge of the Court of Probate shall have full authority either alone or with one or more of the other judges of the court to hear and determine all matters arising therein, and may exercise all the powers and authorities thereof.

Judge of Probate Court.

16. A sentence of judicial separation may be obtained either by the husband or the wife on the ground of adultery, or cruelty, or desertion without cause for two years and upwards.

Sentence of judicial separation.

17. Application for restitution of conjugal rights or for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the court, and the court on being satisfied of the truth of the allegations therein contained, and that there is no legal ground why the same should not be granted, may decree such restitution or judicial separation accordingly, and where the application is by the wife may make any order for alimony which shall be deemed just.

How application to be made.

21. A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or in either case to the court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate, justices, or court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*: Provided that every such order, if made by a police magistrate, or justices at petty sessions, shall, within ten days after the making thereof, be entered with the registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband and any creditor or other

Protection order.

person claiming under him, to apply for the discharge thereof (a); Provided also, that if the husband or any creditor of, or any other person claiming under the husband, shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice. If any such order of protection be made, the wife shall, during the continuance thereof, be and be deemed to have been, during such desertion, in the like position in all respects, with regard to property and contracts, and suing and being sued, as if judicially separated. (b)

Reversal of  
decree.

23. A decree of separation obtained during the absence of a husband or wife may be reversed.

Alimony.

24. The court may direct payment of alimony either to the wife herself or to any trustee on her behalf.

Status of wife.

25. In case of judicial separation the wife shall, whilst the separation shall continue, be considered as a *feme sole* with respect to property she may acquire, or which may come to her, provided that if any such wife shall again cohabit with her husband, all such property as she may be then entitled to shall be held to her separate use subject to any agreement in writing made between herself and her husband while separate.

26. In case of judicial separation the wife shall be considered as a *feme sole*, for the purposes of a contract, and wrongs and injuries, and suing and being sued, in any civil proceeding; provided that where alimony has been decreed and not duly paid, the husband shall be liable for necessaries supplied for her use; provided also that she may join in the exercise of any joint power given to herself and her husband.

Petition for dis-  
solution.

27. It shall be lawful for any husband to present a petition to the said court, praying that his marriage may be dissolved on the ground that his wife has, since the celebration thereof, been guilty of adultery. It shall be lawful for any wife to present a like petition on the ground that since the celebration her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *à mensa et thoro*, or of adultery coupled with desertion, without reasonable excuse for two years or upwards.

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(a) As to discharge, see 27 & 28 Vict. c. 44, *infra*.

(b) Since the passing of the Married Women's Property Act, 1882, a protection order was refused by a Metropolitan police magistrate, and wrongly, as the author submits, as the woman should still be at liberty to be placed under the immediate protection of the court.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

“Incestuous adultery” shall mean adultery with a woman within the prohibited degrees of consanguinity or affinity.

“Bigamy” shall mean marriage of any person being married to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

28. Upon any such petition presented by a husband, the Co-respondent. petitioner shall make the alleged adulterer a co-respondent, unless on special grounds, to be allowed by the court, he shall be excused from so doing.

On every petition presented by a wife for dissolution of marriage, the court may direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

Either of the parties may insist on having the contested matters of fact tried by a jury.

29. Upon any such petition for dissolution the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner. Conduct of petitioner.

30. In case the court, on the evidence in relation to any such petition, shall not be satisfied that the alleged adultery has been committed, or shall find that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of the said cases the court shall dismiss the said petition. Dismissal of petition.

31. In case the court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then the court shall pronounce a decree declaring such marriage to be dissolved, but— Decree of dissolution.

The court shall not be bound to pronounce such decree if it shall find that the petitioner has during the marriage been guilty of adultery or of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery

complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.

**Alimony.**

32. The court may, on any such decree, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum or such annual sum for any term not exceeding her own life as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and for that purpose may refer to one of the conveyancing counsel of the [Chancery Division] to settle and approve of a proper deed or instrument to be executed by all necessary parties; and the court may suspend the pronouncing of its decree until such deed shall have been duly executed.

Power to the court to make interim orders for payment of money by way of alimony or otherwise.

**Damages.**

33. Any husband may either in a petition for dissolution of marriage, or for judicial separation, or in a petition limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner, and such petition shall be served on the alleged adulterer and the wife, unless the court shall dispense with such service, or direct some other service to be substituted.

The damages shall in all cases be ascertained by the verdict of a jury.

After verdict the court shall have power to direct in what manner such damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children of the marriage, or for the maintenance of the wife.

**Costs.**

34. When in a petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery shall have been established, it shall be lawful for the court to order the adulterer to pay the whole or any part of the costs.

**Custody, &c., of children.**

35. In any proceeding for obtaining a judicial separation, or a decree of nullity of marriage, and on any petition for dissolving a marriage, the court may make such orders as it may deem just as to the custody, maintenance, and education of the children of the marriage.

**Affidavit of no collusion.**

41. Every person seeking a decree of nullity of marriage, or judicial separation, or a dissolution of marriage, shall with the petition file an affidavit verifying the same, so far as he or she is able, and stating that there is no collusion with the other party to the marriage.

**Examination of petitioner.**

43. The court may order the attendance of the petitioner for examination on the hearing, but such petitioner shall not be bound to answer any question tending to show that he or she has been guilty of adultery.

45. In case of divorce or judicial separation for adultery of the wife, if it appear to the court that she is entitled to any property either in possession or reversion, the court may order such settlement thereof as it shall think reasonable for the benefit of the innocent party and the children of the marriage, or either or any of them [notwithstanding the disability of coverture (23 & 24 Vict. c. 144, sect. 6).]

48. The rules of evidence observed in the Superior Courts of Common Law shall be applicable to and observed in the trial of all questions of fact.

55. Either party dissatisfied with any decision of the court in any matter which according to the provisions aforesaid may be made by the judge ordinary alone, may within three calendar months thereafter appeal to the full court, whose decision shall be final. (a)

56. Either party dissatisfied with the decision of the full court on any petition for the dissolution [or nullity] of a marriage, may, within [one] month thereafter, appeal to the House of Lords: (31 & 32 Vict. c. 77, s. 3, *infra*.) (b)

The House of Lords may either dismiss the appeal or reverse the decree, or remit the case to the court to be dealt with in all respects as the House of Lords shall direct.

57. Parties may marry again, (c)

- (1.) When the time limited for appealing has expired, and no appeal shall have been presented; or
- (2.) When any such appeal shall have been dismissed; or
- (3.) When on appeal the marriage shall be declared to be dissolved.

When parties may marry again.

### *The Legitimacy Declaration Act, 1858.*

21 & 22 VICT. c. 93.

1. Any natural born subject of the Queen or any person whose right to be so deemed depends wholly or in part on his legitimacy, or on the validity of a marriage, being domiciled [in England or Ireland, or claiming any real or personal estate situate in England, may petition the Divorce Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or grandfather (d) and grandmother, was valid; and—

Petition for declaration of legitimacy, &c.

(a) See now 44 & 45 Vict. c. 68, s. 9, *ante*, p. 427.

(b) See 44 & 45 Vict. c. 68, s. 10, *ante*, p. 427.

(c) See 31 & 32 Vict. c. 77, s. 4, *post*, p. 452.

(d) The court has no power under this Act to make a decree establishing the legitimacy of a petitioner's grandfather: (*Dodds v. Attorney-General*, 42 L. T. 402.)

Any such subject or person may apply for a decree declaring that his marriage was or is valid.

2. Any person being so domiciled, or claiming as aforesaid, may apply for a decree declaratory of his right to be deemed a natural born subject.

Applications under this section and under section 1, may be included in the same petition.

3. Every such petition shall be accompanied by an affidavit verifying the same, and of the absence of collusion.

6. A copy of every such petition and affidavit shall be delivered to the Attorney-General one month before filing. The Attorney-General shall be a respondent.

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*An Act to Amend the 20 & 21 Vict. c. 85.*

21 & 22 VICT. c. 108.

1 and 3. The judge ordinary may sit in chambers with the same power as in open court.

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*An Act to make further Provision concerning the Court for Divorce and Matrimonial Causes.*

22 & 23 VICT. c. 61.

4. The court after a decree of judicial separation, nullity of marriage, or dissolution of marriage, may, upon application (by petition) for this purpose, make, from time to time, all such orders and provisions with respect to the custody, maintenance, and education of the children the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the [Chancery Division] as might have been made by the final decree, or by interim orders in case the proceedings for obtaining such decree were still pending.

Inquiry as to settlements.

5. The court, after a final decree of nullity or dissolution of marriage, may inquire into the existence of *ante* or *post*-nuptial settlements made on the parties, and may make such orders relative to the property settled, either for the benefit of the children of the marriage or their respective parents, as to the court shall seem fit.

Evidence of husband and wife.

6. On any petition presented by a wife for dissolution of marriage by reason of her husband having been guilty of adultery, coupled with cruelty or coupled with desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Appeal.

7. The right of appeal to the House of Lords given by the 20 & 21 Vict. c. 85, s. 56, shall extend to all sentences and final

judgments on petitions under "The Legitimacy Declaration Act, 1858."

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*An Act to Amend the Procedure and Powers of the Court for Divorce and Matrimonial Causes.*

23 & 24 VICT. c. 144.

1. The judge ordinary may exercise all the powers of the full Powers of judge. court, or may call in one of the other judges to assist him.

2. Provided that the judge ordinary may direct any matter to be heard by the full court.

Either party dissatisfied with the decision of the judge ordinary sitting alone, in granting or refusing any application for a new trial, may, within fourteen days, appeal to the full court, whose decision shall be final.

3. Where there is a right of appeal to the House of Lords, Appeal. from the decision of the [Court of Appeal] there shall be the like right of appeal to the said House from the decision of the judge ordinary alone, or with any other judge under this Act.

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*An Act to Amend the Act relating to Divorce and Matrimonial Causes in England (20 & 21 Vict. c. 85).*

27 & 28 VICT. c. 44.

1. Where, under the provisions of sect. 21 of the said Act(a), Discharge of a wife deserted by her husband shall have obtained or shall protection order. obtain an order protecting her earnings and property as therein mentioned, the husband and any creditor or other person claiming under him may apply to the court or to the magistrate or justices by whom such order was made for the discharge thereof, as by the said Act authorised.

In case the order shall have been made by a police magistrate who shall have died, or been removed, or become incapable of acting, the husband, &c., may apply to the magistrates for the time being acting in the place of the one who made such order. An order for discharge of an order of protection may be applied for to the court, although not made by the court, and such order made at one petty sessions may be discharged at any later petty sessions, or by the court.

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*Divorce and Matrimonial Causes Act.*

29 VICT. c. 32.

1. It shall be lawful for the court on a decree for dissolution Allmony.

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(a) *Ante*, p. 445.

of marriage to make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable. *Proviso* : If the husband afterwards shall become unable to pay the same, the court may discharge, modify, or suspend such order, and again revive the same wholly or in part.

Relief may be  
given to  
respondent.

2. In any suit for dissolution if the respondent shall oppose the relief sought on the ground, in case of such a suit instituted by the husband, of his adultery, cruelty, or desertion, or by the wife on the ground of her adultery or cruelty, the court may give the respondent on application the same relief to which he or she would have been entitled if he or she had filed a petition seeking such relief.

Decree nisi.

3. No decree nisi for a divorce shall be made absolute until after the expiration of six months from pronouncing the same, unless the court shall fix a shorter time.

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*The Divorce Amendment Act, 1868.*

31 & 32 VICT. c. 77.

Appeal.

3. Either party dissatisfied with the final decision of the court on a petition for dissolution or nullity of marriage may within one month after the pronouncing thereof appeal to the House of Lords. *Proviso* : No respondent or co-respondent not defending on the occasion of the decree nisi being made shall have any right of appeal against the decree absolute unless the court at the time of pronouncing the same shall permit.

4. Sect. 57 of 20 & 21 Vict. c. 85, shall be read with reference to the time for appealing as varied by this Act. And in cases where under this Act there shall be no right of appeal, the parties respectively shall be at liberty to marry again at any time after the decree absolute.

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*The Matrimonial Causes Act, 1873.*

36 VICT. c. 31.

1. Sect. 7 of 23 & 24 Vict. c. 144, and sect. 3 of 29 & 30 Vict. c. 32, shall extend to decrees and suits for nullity of marriage in like manner as they apply to decrees and suits for divorce.

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*The Matrimonial Causes Act, 1878.*

41 VICT. c. 19.

Costs of inter-  
vention.

2. When the Queen's Proctor or any other person shall intervene or show cause against a decree nisi in any suit or proceeding



for divorce or for nullity of marriage, the court may make such order as to the costs of the Queen's Proctor, or of any other person who shall intervene or show cause as aforesaid, or of all and every party or parties thereto, occasioned by such intervention or showing cause as aforesaid, as may seem just; and the Queen's Proctor, any other person as aforesaid, and such party or parties shall be entitled to recover such costs in like manner as in other cases: Provided that the Treasury may, if it shall think fit, order any costs which the Queen's Proctor shall, by any order of the court made under this section, pay to the said party or parties, to be deemed to be part of the expenses of his office.

The court may exercise the powers vested in it by the provisions of sect. 5 of 22 & 23 Vict. c. 61 (a), notwithstanding that there are no children of the marriage.

Extension of  
sect. 5 of 22 & 23  
Vict. c. 61.

4. If a husband shall be convicted summarily or otherwise of an aggravated assault within the meaning of the 24 & 25 Vict. c. 100, s. 43 (b), upon his wife, the court or magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband; and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty; and such order may further provide:

Order by magis-  
trate where  
husband con-  
victed of aggra-  
vated assault.

(1.) That the husband shall pay to his wife such weekly sum as the court or magistrate may consider to be in accordance with his means, and with any means which the wife may have for her support, and the payment of any sum of money so ordered shall be enforceable and enforced against the husband in the same manner as the payment of money is enforced under an order of affiliation; and the court or magistrate by whom any such order for payment of money shall be made shall have power from time to time to vary the same on the application of either the husband or the wife, upon proof that the means of the husband or wife have been altered in amount since the original order or any subsequent order varying it shall have been made;

(2.) That the legal custody of any children of the marriage under the age of ten years shall, in the discretion of the court or magistrate, be given to the wife.

Provided always, that no order for payment of money by the husband, or for the custody of children by the wife, shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned; and

(a) *Ante*, p. 450.

(a) Part IV., *post*.

that any order for the payment of money or for the custody of children may be discharged by the court or magistrate by whom such order was made upon proof that the wife has since the making thereof been guilty of adultery; and provided also, that all orders made under this section shall be subject to appeal to the Probate, Divorce, and Admiralty Division of the High Court of Justice.

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## STATUTES RELATING TO EVIDENCE AND WITNESSES. (a)

### *An Act to declare the Law with respect to Witnesses Refusing to Answer.*

46 GEO. 3, c. 47.

1. A witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has a tendency to accuse himself, or to expose him to penalty or forfeiture of any nature, by reason only that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit.

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### *An Act for improving the Law of Evidence.*

6 & 7 VICT. c. 85.

1. Witnesses are not to be excluded from giving evidence by reason of incapacity from crime or interest.

This Act is not to repeal any provision in the 7 Will. 4 & 1 Vict. c. 26 (the Wills Act). *Proviso:* In courts of equity a defendant may be examined as a witness on behalf of the plaintiff or a co-defendant, saving just exceptions. Interest in the matter in question shall not be deemed a just exception, but may affect the credit of such defendant as a witness.

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### *An Act to facilitate the Admission in Evidence of certain Official and other Documents.*

8 & 9 VICT. c. 113.

Reception in  
evidence of offi-  
cial documents.

1. Any certificate, official, or public documents or document, or document or proceeding of any corporation or company, or any certified copy of any document, bye-law, entry in any register or other book, or other proceeding receivable in evidence by force of any Act of Parliament, shall be admitted in evidence, provided

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(a) And see 24 & 25 Vict. c. 66, and 40 & 41 Vict. c. 14, *post*, Part IV.

they respectively purport to be sealed and signed, or signed alone, as required, or impressed with a stamp and signed as directed by the respective Acts, without any proof of the seal or stamp, where necessary, or of the signature or official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence.

2. All courts, judges, and other judicial officers shall take judicial notice of the signatures of the judges of the superior courts, provided such signatures be attached or appended to any decree, order, or other judicial or official document. Signatures of judges.

3. Copies of private and local and personal Acts of Parliament, if purporting to be printed by the Queen's printers, and copies of the journals of either House of Parliament, and of royal proclamations purporting to be printed by the printers to the Crown, or to either House of Parliament, shall be admitted as evidence, without proof that such copies were so printed. Copies of private Acts, &c.

4. Persons forging any such seal, stamp, signature, &c., as aforesaid, or tendering the same knowing the same to be false or counterfeit, or printing any copy of a private Act purporting to be printed as aforesaid, shall be guilty of felony. Forgery.

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*An Act to Amend the Law of Evidence.*

14 & 15 VICT. c. 99.

2. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the parties thereto and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *vivâ voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding. Parties may be witnesses.

3. But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband. Criminal cases.

1 Vict. c. 26.

5. Nothing in this Act shall repeal anything in the 7 Will. 4 & 1 Vict. c. 26 (the Wills Act).

Copies of public documents.

14. Whenever any book or document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof, or extract therefrom, shall be admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted.

Administration of oaths.

16. Every court, judge, justice, officer, commissioner, arbitrator, or other person having, or who shall have by law or by consent of parties, authority to hear, receive, and examine evidence, is empowered to administer an oath to all such witnesses as are legally called before them respectively.

Forgery.

17. Any person forging the seal, stamp, or signature of any document in this Act mentioned or referred to, or who shall tender in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, shall be guilty of felony.

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*The Evidence Amendment Act, 1853.*

16 & 17 VICT. c. 83.

Evidence of husbands and wives of parties.

1. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any action or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the husbands and wives of the parties thereto, and of the persons in whose behalf any such action or other proceeding, &c., may be brought, or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *vivâ voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said action or other proceeding.

2. Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife for or against her husband, in any criminal proceeding.

3. No husband or wife shall be compellable to disclose any communication made by either to the other during the marriage.

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*An Act to enable Courts of Law to compel the Attendance of Witnesses out of their Jurisdiction.*

17 & 18 VICT. c. 34.

Witnesses in United Kingdom

1. Courts of law, or a judge thereof if the court shall not be

sitting, in England, Ireland, and Scotland, may issue process to compel the attendance of witnesses being in the United Kingdom, although not within their jurisdiction. but not within jurisdiction of court.

2. Every such writ shall state at the foot thereof that the same is issued by special order of the court or judge, and no such writ shall issue without special order.

3. The courts of the country in which such process shall be served shall punish witnesses served and not appearing.

4. Persons shall not be punished for default of appearance if it shall appear that sufficient money shall not have been tendered to defray expenses.

5. This Act shall not prevent a commission being issued to examine witnesses out of the jurisdiction.

6. Nor affect the admissibility of evidence where now receivable on the ground of any witness being beyond the jurisdiction.

### *The Common Law Procedure Act, 1854.*

17 & 18 VICT. c. 125. (a)

20. If any person called as a witness, or requiring or desiring to make an affidavit, shall refuse or be unwilling from alleged conscientious motives to be sworn, the court, judge, or presiding officer, or the person qualified to take affidavits, upon being satisfied of the sincerity of such objection, may permit such person to make a solemn affirmation or declaration in the form in this section in the Act set forth, which shall be of the same force and effect as an oath in the usual form. Affirmation in lieu of oath.

I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form. (b)

21. Persons making a false affirmation are to be subject to the same punishment as for perjury, where the matter, if it had been sworn, would have amounted to wilful and corrupt perjury.

22. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement incon- How far a party may discredit his own witnesses.

(a) For other sections of this Act, see *ante*, p. 431.

(b) The exemption from taking an oath in this section is in favour of scruples of conscience only: (*In the Goods of Prince Henry the 69th of Reuss-Kostritz*, 41 L. T. 803.)

sistent with the present testimony ; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Inconsistent statements.

23. If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it ; but before such proof can be given, the circumstances, &c. (as in sect. 22).

Cross-examination as to previous statements in writing.

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him ; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. *Proviso* : It shall be competent for the judge at any time during the trial to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Previous conviction.

25. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction.

Attesting witnesses.

26. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite ; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

Handwriting.

27. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses ; and such writings, and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Stamp duty.

28. Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer whose duty it is to read such document, to call the attention of the judge to any omission or insufficiency of the stamp ; and the document, if unstamped or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty and the penalty required by statute, with the additional penalty of 1*l.*, shall have been paid.

*The Evidence further Amendment Act, 1869.*

32 &amp; 33 VICT. c. 68.

2. Parties in actions for breach of promise of marriage shall be competent to give evidence therein. *Proviso*: No plaintiff in such action shall recover the verdict unless his or her testimony be corroborated by some other material evidence in support of such promise. (a) Breach of promise of marriage.

3. Parties to any proceeding instituted in consequence of adultery, and their husbands and wives, shall be competent to give evidence therein. *Proviso*: No witness, whether a party or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already in the same proceeding given evidence in disproof of his or her alleged adultery. Proceedings in consequence of adultery.

4. Any witness in any court of justice objecting to take an oath, or objected to as incompetent to take an oath, shall, if the presiding judge is satisfied that the oath would have no binding effect on his conscience, make the following promise and declaration:— Declaration in lieu of oath.

I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.

*The Evidence Amendment Act, 1870.*

33 &amp; 34 VICT. c. 49.

1. The words "court of justice," and "presiding judge" in sect. 4 of 32 & 33 Vict. c. 68 (*sup.*), shall be deemed to include any person or persons having by law authority to administer an oath for the taking of evidence.

*Bankers' Books Evidence Act, 1879.*

42 VICT. c. 11.

3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded. Proof of entries.

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(a) Where the plaintiff was overheard to charge the defendant with the promise, and he made no answer, it was held that there was corroborative evidence for the jury: (*Bessela v. Stern*, 2 C. P. Div. 265.)

Proof of banker's book.

4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

Verification of copy.

5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

Case in which banker, &c., not compellable to produce book, &c.

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

Order for inspection, &c.

7. On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.

Costs.

8. The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act, shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

Interpretation of "bank," "banker," and "bankers' books"

9. In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank.

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal



proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the secretaries of the post office.

Expressions in this Act relating to "banker's books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

10. In this Act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration; Interpretation of "legal proceeding," "court," "judge."

The expression "the court" means the court, judge, arbitrator, persons, or person before whom a legal proceeding is held or taken;

The expression "a judge" means with respect to England a judge of the High Court of Justice;

The judge of a County Court may, with respect to any action in such court, exercise the powers of a judge under this Act.

11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.

## STATUTES RELATING TO THE COUNTY COURTS.

### *An Act for the more easy Recovery of Small Debts and Demands in England.*

9 & 10 VICT. c. 95.

58. All pleas of personal actions where the debt or damage claimed is not more than [50*l.*] whether on balance of account or otherwise may be holden in the County Court without writ, and all such actions so brought shall be heard and determined in a summary way in a court constituted under and according to the provisions of this Act. *Proviso:* The court shall not have cognisance of any action of ejectment<sup>(a)</sup> or in which the title

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<sup>(a)</sup> See, however, *post* 19 & 20 Vict. c. 108, s. 50, and 31 & 32 Vict. c. 142 s. 11.

to any corporeal or incorporeal hereditaments (a) or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, seduction, or breach of promise of marriage,

**Wages.**

64. Persons under age may sue for wages.

**Jury.**

70. In all actions where the amount claimed shall exceed 5*l.*, either party may require a jury to be summoned. In cases not exceeding 5*l.*, the judge may, in his discretion, on the application of either party, order the action to be tried by jury.

73. The jury shall consist of five jurymen; the parties may challenge as in the superior courts; the verdict must be unanimous.

**Special defences.**

76. No defendant shall be allowed to set up a defence of set-off, infancy, coverture, Statute of Limitations, or bankruptcy, without the consent of the plaintiff, unless notice shall be given to the clerk of the court who shall send notice thereof to the plaintiff.

**Reference.**

77. The judge, by consent of both parties, may refer any case to arbitration.

**Where plaintiff does not appear, or prove his case.**

79. If upon the return of any summons, or at any continuation or adjournment of the court or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out. If he shall appear, but shall not make proof of his demand to the satisfaction of the court, the judge may nonsuit him, or give judgment for the defendant, and in either case where the defendant shall appear and shall not admit the demand may award to the defendant such sum as costs and satisfaction for his trouble and attendance as the judge shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered. *Proviso*: If the plaintiff shall not appear when called upon, and the defendant or some one duly authorised on his behalf shall appear and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court may proceed to give judgment as if the plaintiff had appeared.

**Where defendant does not appear.**

80. If on the day named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the

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(a) See, however, *post* 31 & 32 Vict. c. 142, s. 12.

plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended. *Proviso* : The judge in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial on such terms as he may think fit.

82. The defendant may pay money into court in any action brought under this Act, and notice thereof shall be given to the plaintiff by the clerk of the court. Payment into court.

90. Plaints may be removed into a Superior Court where the amount claimed exceeds 5*l.*, by leave of a judge of a Superior Court upon such terms as he shall think fit. (a) Removal of plaint.

93. If there be cross judgments, that party only who has judgment for the larger sum shall issue execution, and only for the difference. Cross judgments.

95. If any order shall have been made for payment by instalments, execution may be issued for the whole sum remaining unpaid on failure to pay any instalment. Instalments.

96. The wearing apparel and bedding of a judgment debtor, or his family, and the tools and implements of his trade to the value of 5*l.*, shall be protected from seizure under execution. Goods privileged from seizure.

### *An Act to extend the 9 & 10 Vict. c. 95.*

13 & 14 Vict. c. 61.

8. Any person against whom a plaint shall be entered in any County Court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of the clerk or assistant clerk of the court in which such plaint shall have been entered, or one of their clerks respectively, or in the presence of a [solicitor], sign a statement confessing and admitting the amount of the debt, or demand, or part thereof, and such clerk shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, and it shall not be necessary for the plaintiff to prove such debt. Confession of debt or part thereof.

9. An agreed statement as to the amount of a debt, and terms of payment may be signed in the like presence.

14. Power to appeal to the Superior Courts on a point of law or admission, or rejection of evidence. Appeal.

15. Such appeal to be in the form of a case agreed on by both parties or their [solicitors], or, in case they do not agree, to be settled by the judge.

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(a) See *post* 19 & 20 Vict. c. 108, s. 39.

*An Act to Amend the Acts relating to the County Courts.*

19 &amp; 20 VICT. c. 108.

**Trial by consent.** 23. The County Courts may try all actions that may be brought in the Superior Courts of Common Law if both parties agree by a memorandum signed by them or their [solicitors] that any County Court named therein shall have power to try such action.

**Titles.** 25. The court may, with the consent in writing of the parties, at the hearing, decide claims in which titles come in question.

**Order for trial in County Court after issue joined.** 26. Where in any action of contract brought in a Superior Court the claim indorsed on the writ does not exceed 50*l.*, or if originally exceeding 50*l.*, is reduced by payment into court, an admitted set-off, or otherwise, to a sum not exceeding 50*l.*, a judge of a Superior Court, on the application of either party after issue joined, may in his discretion and on such terms as he shall think fit, order that the cause be tried in any County Court which he shall name; and thereupon the plaintiff shall lodge with the registrar of such court such order, and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by the registrar to both parties or their [solicitors]; and after such hearing the registrar shall certify the result to the master's office of such Superior Court; and judgment in accordance with such certificate may be signed in such Superior Court.

27. No action shall be brought in a County Court on any judgment of a Superior Court.

**Evidence of prisoner.** 31. A county court judge may issue a warrant for bringing up a prisoner to give evidence.

**Removal into High Court.** 39. If in any action of contract more than 20*l.*, or in any action of tort more than 5*l.* is claimed, the defendant may, by giving notice that he objects to the action being tried in the county court, have the same removed into a superior court on giving security. This is not to prejudice removal by *certiorari*.

**Judgment summons.** 48. A judgment summons may, by leave of the judge, be obtained from the court in which judgment was obtained, although the judgment debtor shall not then dwell or carry on business within the district of such court.

**Recovery of land.** 50. Possession of corporeal hereditaments, where neither the value of the premises nor the rent payable exceeds 50*l.* per annum, may be recovered by landlords in the County Court where the term has expired or been determined by notice, and, by sect. 52, for non-payment of rent if in arrear for half a year, and no sufficient distress found.

51. The plaintiff, in such cases as mentioned in sect. 50, may claim rent and mesne profits not exceeding 50*l.*

53. Where a summons to recover possession shall be served on or come to the knowledge of a sub-tenant, he shall forthwith give notice to his landlord, under penalty of forfeiting three years' rack-rent.

63. The registrar of the County Court of the district in which a distress is taken, shall in future grant replevins, and the powers of the sheriff with respect thereto shall cease. Replevins.

64. The registrar shall, at the instance of the party whose goods have been distrained, cause the same to be replevied to such party on his giving one or other of such securities as mentioned in sects. 65 and 66.

65. An action of replevin may be commenced in any Superior Court. If the replevisor shall wish to commence proceedings in such court, he shall, at the time of replevying, give security to be approved of by the registrar for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in a superior court, conditioned to commence an action of replevin against the distrainer in such Superior Court as shall be named in the security, within one week from the date thereof, and to prosecute such action with effect and without delay; and, unless judgment thereon be obtained by default, to prove before such court that he had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise was in question, or that such rent or damage exceeded 20*l.*, and to make a return of the goods, if a return thereof shall be adjudged.

66. Similar enactment in case the replevisor shall wish to proceed in a County Court, as to giving security, prosecuting the action, and return of the goods, but the action may be commenced within one month from the date of security.

67. An action of replevin brought in a County Court may be removed into a Superior Court by *certiorari*, on the defendant giving security conditioned to defend and to prove that he had good ground for believing either that the title to some corporeal, &c. (as in sect. 65), or that the rent or damage in respect of which the distress shall have been taken exceeded 20*l.*

68. Power to appeal is given—

Appeal.

In replevin, where the rent or damage exceeds 20*l.*

In actions for the recovery of tenements, where the yearly rent or value exceeds 20*l.*

In interpleader, where the subject matter exceeds 20*l.*

In all actions where the parties agree that the court shall have jurisdiction.

69. The parties may before decision agree in writing not to appeal, and such agreement will be binding on them.

Rights of landlord.

75. In case of execution, a landlord, if the tenancy be weekly, may claim not exceeding four weeks' rent. If the tenement be let for any other term less than a year, the rent of two terms of payment; and the rent of one year in any other case.

### *County Courts Equitable Jurisdiction Act.*

28 & 29 VICT. c. 99.

Jurisdiction in equity up to 500*l.* in certain matters.

1. County Courts shall have and exercise all the power and authority of the Court of Chancery in—

- (1.) All suits by creditors, legatees, devisees (whether in trust or otherwise), heirs at law, or next of kin, in which the personal or real, or personal and real estate, against or for an account or administration of which the demand may be made, shall not exceed in amount or value 500*l.*
- (2.) All suits for the execution of trusts (a) in which the trust estate or fund shall not exceed in amount or value 500*l.*
- (3.) All suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed 500*l.*
- (4.) [*Repealed; but an extended provision is contained in the 30 & 31 Vict. c. 142, s. 9, infra.*]
- (5.) All proceedings under the Trustee Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value 500*l.*
- (6.) All proceedings relating to the maintenance or advancement of infants, in which the property of the infant shall not exceed in amount or value 500*l.*
- (7.) All suits for the dissolution or winding-up of any partnership, in which the whole property, stock, and credits shall not exceed in amount or value 500*l.*
- (8.) All proceedings for orders in the nature of injunctions where requisite for granting relief in any matter in which jurisdiction is given by this Act to county courts, or for stay of proceedings at law, to recover any debt provable under a decree for administration of an estate made by the court to which application to stay proceedings is made.

Transfer to Chancery Division.

3. Any one of the Vice-Chancellors, on application at chambers of any party to any suit or matter pending under this Act, shall have power then and there, or, if he shall think fit, after hearing

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(a) Including constructive trusts: (*Clayton v. Renton*, 4 Eq. 158.)

a summons served upon the other party or parties, to transfer the same to the [Chancery Division].

4. The City of London Court shall have similar jurisdiction to the Metropolitan county courts.

5. Power to the county courts to order any legacy to which *Legacies.* an infant or person beyond seas may be entitled, to be paid into the Bank of England in accordance with 36 Geo. 3, c. 52, s. 32.

7. The provisions of the County Courts Acts, as to jurors, *Jurors, &c.* suitors, and witnesses, shall extend to such persons under this Act.

9. If, during the progress of any suit, it shall be made to appear to the court that the subject matter exceeds the limit of jurisdiction, it shall not affect the validity of any order or decree which shall be already made, but the court shall direct the suit to be transferred to the [Chancery Division]. *Proviso:* Any party may apply to a Vice-Chancellor at chambers for an order authorising and directing any suit to be carried on in the county court, notwithstanding excess of limit of jurisdiction. The Vice-Chancellor, if he shall deem it right to summon the other parties or any of them before him for that purpose, after hearing such parties, or in default of the appearance of all or any of them, shall have power to make such order. *Where matter beyond jurisdiction.*

10. Proceedings :—

- (1.) Under this Act, which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments, shall be taken in that county court within the district of which the same or any part thereof are situate. *In what court proceedings to be taken.*
- (2.) Under the Trustee Acts, 1850 and 1852, shall be taken in the County Court within the district of which the persons making the application, or any of them, reside.
- (3.) For administration of the assets of a deceased person shall be taken in the county court within the district of which the deceased had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode.
- (4.) In partnership cases shall be taken in the County Court within the district of which the partnership business shall be carried on.
- (6.) In any suit or other matter not otherwise provided for shall be taken in the County Court within the district of which the defendants, or any one of them, resides or carries on business.

11. If, during the progress of any suit, it shall be made to *Transfer.*

appear to the court that the same could be more conveniently prosecuted in some other County Court, the court may transfer it accordingly.

**Appeal.**

18. If any party in a suit or matter under this Act be dissatisfied with the determination or direction of the County Court judge on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal to a Vice-Chancellor. *Proviso*: Such party shall, within thirty days after such determination or direction give notice of appeal, and deposit 10*l.* as security for costs. *Proviso*: No appeal shall lie against the decision of a County Court judge given upon any question as to the value of property for the purpose of determining as to jurisdiction, nor on the ground that the proceedings might have been taken in any other County Court.

*The County Courts Act, 1867.*

30 & 31 VICT. c. 142.

**Where plaint  
may be entered.**

1. A plaint may be entered in the County Court within the district of which the defendant or one of the defendants shall dwell or carry on business at the time of bringing the action or suit, or it may be entered by leave of the judge or registrar in the County Court within the district of which the defendant or one of the defendants dwelt or carried on business at any time within six months next before action or suit brought, or with the like leave in the County Court in the district of which the cause of action or suit wholly or in part arose.

**Metropolitan  
County Courts.**

3. Proceedings commenced in a metropolitan County Court shall be continued therein if the defendant resides or carries on business in the district of one of such courts, or within the City of London. An action may be commenced and subsequent proceedings taken in the court held under the London (City) Small Debts Extension Act, 1857, by a plaintiff residing or carrying on business within the City of London, against a defendant who resides or carries on business within the district of any metropolitan County Court; and an action may be commenced and proceedings taken in any of such County Courts by a plaintiff residing or carrying on business within the district of any such County Court, against a defendant who resides or carries on business within the City of London.

**Actions for beer,  
&c.**

4. No action shall be brought to recover any debt in respect of the sale of any ale, porter, beer, cider, or perry, consumed on the premises where sold, or in respect of any money or goods lent, or security given for, in, or towards obtaining the same.

**Costs in actions  
in High Court.**

5. If in any action commenced after the passing of this Act in a Superior Court, the plaintiff shall recover a sum [less than]



20*l.*, if the action is founded on contract, or 10*l.* if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the court or a judge at chambers shall allow such costs by rule or order. (a)

7. Where in any action of contract brought in a Superior Court the claim indorsed on the writ does not exceed 50*l.*, or where the same is reduced by payment, admitted set-off, or otherwise, to a sum not exceeding 50*l.*, it shall be lawful for the defendant, within eight days from the day of service of the writ, if the whole or part of the demand be contested, to apply by summons at chambers to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the same might have been commenced, and on the hearing the judge shall, unless there be good cause to the contrary, order such action to be so tried; and thereupon the plaintiff shall lodge the original writ and order with the registrar of the County Court mentioned in such order, who shall appoint a day for the hearing, notice whereof shall be sent to both parties or their [solicitors], and the proceedings shall be heard and taken in such court as if originally commenced there; the costs subsequent to the order shall be allowed according to the County Court scale, and costs previously had in the Superior Court according to the scale of such court.

Order for trial in  
County Court.

8. Where any suit or proceedings shall be pending in the [Chancery Division] which might have been commenced in a County Court, any of the parties may apply at chambers to have such suit or proceeding transferred to the County Court or one of the County Courts in which the same might have been commenced, and the judge shall have power upon such application, or without such application, if he shall think fit, to make an order for transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties shall have the same right of appeal as if the suit had been commenced in the County Court.

Transfer of  
equity cases to  
County Courts.

9. Jurisdiction may be exercised in all suits for the specific performance of or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase money, or, in case of a lease, the value of the property, shall not exceed 500*l.*

Specific per-  
formance.

10. It shall be lawful for any person against whom an action

Actions of tort  
in High Court.

(a) See 45 & 46 Vict. c. 57, *infra*; and Order LXV., r. 12, in Haynes's Student's Guide to the Practice of the Supreme Court, p. 172.

for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort, may be brought in a Superior Court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant, should a verdict be not found for the plaintiff; and thereupon a judge of the court in which the action is brought shall have power to order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of a master, or satisfy the judge that he has a cause of action fit to be prosecuted in the Superior Court, all the proceedings in the action shall be stayed, or, in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such County Court, who shall appoint a day for the hearing, and give notice as in sect. 7; and the court so named shall have jurisdiction as if the parties had agreed in writing that the said court should have power to try the action, and the same had been commenced by plaint therein; provision as to costs similar to that in sect. 7.

Ejectment.

11. Actions of ejectment where neither the value of the lands, tenements, or hereditaments, nor the rent shall exceed 20*l.* per annum, may be brought in the County Court of the district in which the property is situated.

Title.

12. The County Courts shall have jurisdiction to try any action to which the title to any corporeal or incorporeal hereditaments shall come in question where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed 20*l.* per annum, or in case of an easement or licence where neither the value nor the reserved rent of lands, tenements, or hereditaments in respect of which the same is claimed shall exceed 20*l.* per annum. *Proviso*: The defendant or his landlord may, within one month from the service of the writ (*sic*), apply by summons at chambers to the plaintiff to show cause why such action should not be tried in a Superior Court on the ground that the title to lands or hereditaments of greater annual value than 20*l.* would be affected by the decision in such action, and an order may be made for trial accordingly.

Appeal.

13. An appeal from a County Court on the same grounds, and subject to the same conditions as provided by 13 & 14 Vict. c. 61, s. 14, shall be allowed in actions of ejectment, and all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, *and with the leave of the judge*, an appeal shall be allowed in actions in which an appeal is not now allowed.

14. When an action or suit is brought in a County Court which it has no jurisdiction to try, the judge shall order the same to be struck out; and, unless the parties consent to the court having jurisdiction, shall have power to award costs as if the court had jurisdiction, and the plaintiff had not appeared, or had failed to prove his demand. Costs where no jurisdiction.

16. If in any action of contract a defendant shall not appear at the hearing either in person or by some person duly authorised on his behalf, and no sufficient excuse for his absence shall be shown, the registrar may by leave of the judge, on proof of the service of the summons and of the debt being due and owing, enter up judgment for the plaintiff, and have the same power to make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the cause as the judge has; but the judgment and any execution thereon may be set aside and a new trial granted on such terms, if any, as the judge may require. Where defendant does not appear.

17. Where a defendant, appearing in person, or by some person duly authorised, admits the claim, the registrar may, by leave of the judge, settle the terms of payment, and enter up judgment. Where claim admitted.

24. Moneys, annuities, stocks, or securities not exceeding 500*l.*, vested in trustees upon trust within the meaning of the 10 & 11 Vict. c. 96(a), may be paid or transferred into the County Court. Trustees may pay into court.

25. For the purposes of sect. 24 the power given to the Court of Chancery by the 12 & 13 Vict. c. 24, shall be possessed by the County Courts.

31. The high bailiff may interplead in case of a claim made in respect of goods taken in execution. High bailiff may interplead.

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*An Act for the Relief of Widows and Children of Intestates where the personal estate is of small value.*

36 & 37 VICT. c. 52.

1. Where the whole estate and effects of an intestate shall not exceed 100*l.* in value, his widow, or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the County Court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by Application for administration in certain cases through medium of County Court.

the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration, and transmit them by post to the said registrar of the County Court, to be by him delivered to the party so applying for the same, without the payment of any fee except as herein provided.

2. The registrar of the County Court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

3. If the registrar of the County Court has reason to believe that the whole estate and effects of which the intestate died possessed exceeds 100*l.* in value, he shall refuse to proceed until satisfied as to the real value thereof.

4. Power to such registrars to exercise all the powers of commissioners of the Court of Probate for the purposes of this Act.

#### SCHEDULE.

##### *Fees.*

Where estate not exceeding 20*l.* 5*s.*; where estate exceeding 20*l.* 5*s.* and 1*s.* extra for every 10*l.* or portion thereof over the first 20*l.*

### *Intestate Widows and Children Act Extension Act.*

38 & 39 VICT. c. 27.

Extension of Act of 36 & 37 Vict. c. 52, to children of poor intestate widows.

1. Where the whole estate and effects of an intestate widow shall not exceed in value the sum of 100*l.*, any one or more of her children, if they shall reside at a distance exceeding three miles from the Registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the County Court within the district in which the intestate had her fixed place of abode at the time of her death, and on compliance with the regulations prescribed in the 36 & 37 Vict. c. 52, shall be entitled to the benefits in that case made and provided by the said Act, and the schedule thereunto annexed.

Construction.

2. This Act shall be read and construed along with and as part of the 36 & 37 Vict. c. 52.

### *The County Courts Act, 1875.*

38 & 39 VICT. c. 50.

In respect of certain demands

1. In any action in a County Court for a debt or a liquidated money demand, the plaintiff may, at his option, cause to be issued

a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the form in Schedule (A.) to this Act) a summons in the form or to the effect given in Schedule (B.) to this Act, and if such last-mentioned summons be issued it shall be personally served on the defendant, and if the defendant shall not within sixteen days after service of the summons, inclusive of the day of service, give notice in writing, signed by himself or his [solicitor], to the registrar of the court from which the summons issued, of his intention to defend, the plaintiff may, after sixteen days and within two months from the day of service, upon proof of its service, or of an order for leave to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar.

plaintiff may require defendant to give notice of intention to defend on pain of judgment by default.

The order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff, or his [solicitor], shall in writing have consented to take at the time of the entry of the plaint or of the judgment.

Where the defendant shall have given notice of defence, the registrar shall, immediately upon the receipt of such notice, send a letter to the plaintiff or his [solicitor] by post, stating therein that the defendant has given notice of his intention to defend, and shall send by post, to both plaintiff and defendant, notice of the day upon which he shall have fixed that the trial shall take place, at least six clear days before the day so fixed.

Where the defendant shall neglect to give such notice of defence, the judge or registrar shall, upon an affidavit disclosing a defence upon the merits, and satisfactorily explaining his neglect, let in the defendant to defend upon such terms as he may think just.

Where personal service cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evades service of the same, it shall be lawful for the judge or registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge or registrar may seem fit.

Provided always, that no other summons than a summons in the ordinary form shall, without leave of the judge or registrar, be issued where the amount claimed shall not exceed 5*l.*, unless the action is for the price, value, or hire of goods which, or some part of which, were sold and delivered or let on hire to the defendant to be used or dealt with in the way of his trade, profession, or calling, and the leave of the judge or registrar shall

be given in accordance with regulations to be prescribed by rules of court.

Summonses to witnesses.

2. Either of the parties to an action or any other proceeding may obtain of the registrar of the court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which are now or may be required to be served personally, may, under such regulations as may be prescribed by rules of court, be served by a bailiff of the court or otherwise.

3. As to proof of service of summons by bailiff.

Assessors.

5. In any action or proceeding it shall be lawful for the judge, if he think fit, on the application of either party, to summon to his assistance, in such manner as may be prescribed by rules of court, one or more persons of skill and experience in the matter to which the action or proceeding relates, who may be willing to sit with the judge and act as assessors; and their remuneration for so sitting shall be at such rate as may be prescribed by rules of court, and shall be costs in the cause or proceeding, unless otherwise ordered by the judge; but where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in manner to be prescribed by rules of court.

Appeal may be made within eight days without stating special case.

6. In any cause, suit, or proceeding, other than a proceeding in bankruptcy, tried or heard in any County Court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction, or decision by motion to the court to which such appeal lies, instead of by special case, such motion to be *ex parte* in the first instance, and to be granted on such terms as to costs, security, or stay of proceedings as to the court to which such motion shall be made shall seem fit. And if the court to which such appeal lies be not then sitting, such motion may be made before any judge of a superior court sitting in chambers. And at the trial or hearing of any such cause, suit, or proceeding the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall, at the expense of any person or persons, being party or parties in any such cause, suit, or proceeding, requiring the same for the purpose of appeal, furnish a copy of such note, or allow a copy to be taken of the same by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall

be used and received on such motion and at the hearing of such appeal. (a)

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*County Courts (Costs and Salaries) Act, 1882.*

45 & 46 VICT. c. 57.

4. Section 5 of 30 & 31 Vict. c. 142 (b) shall be read and construed as if the words "less than" were substituted for the words "not exceeding." Construction of sect. 5 of 30 & 31 Vict. c. 142.

5. Notwithstanding any Act of Parliament or any rule to the contrary, it shall be in the power of the judge of County Court to award costs on the higher scale to the plaintiff on any amount recovered, however small, or to the defendant who successfully defends an action brought for any amount, however small, provided the said judge certify that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or of general or public interest. Award of costs.

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(a) By rule of 22nd Jan. 1877, "No motion shall be made by way of appeal unless a copy of the judge's notes, signed by the judge, shall have been handed to the proper officer in court, unless otherwise ordered."

(b) *Ante*, p. 468

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## PART III.

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### STATUTES RELATING TO BANKRUPTCY.

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*The Debtors Act, 1869. (a)*

32 & 33 VICT. c. 62.

#### PART II.—*Punishment of Fraudulent Debtors. (b)*

Certain offences  
by bankrupt or  
arranging debtor  
made misde-  
meanors.

11. Any person adjudged bankrupt, or whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, 1869, shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction shall be liable to be imprisoned not exceeding two years, with or without hard labour:—

- (1.) If he does not, to the best of his knowledge and belief, discover to the trustee all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except in the ordinary way of trade, or laid out in the ordinary expense of his family.
- (2.) If he does not deliver up to such trustee, or as he directs, all such part of his property as is in his custody or under his control, and which he is required by law to deliver up.
- (3.) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs.
- (4.) If after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, or within four months next before the same, he conceals any part of his property to the value of 10*l.* or upwards, or any debt due to or from him.

*Unless in either of the above cases, and also in sub-sect. 6, the jury is satisfied that he had no intent to defraud.*

- (5.) If after the presentation of a bankruptcy petition by or

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(a) For other sections see *ante*, pp. 136, 384.

(b) See *post*, sects. 163-167 of the Bankruptcy Act, 1883.



against him or the commencement of the liquidation, or within four months next before the same, he fraudulently removes any part of his property of the value of 10*l.* or upwards.

- (6.) If he makes any material omission in any statement relating to his affairs.
- (7.) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for a month to inform the trustee thereof.
- (8.) If, after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs.
- (9.) If, after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, or within four months next before the same, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs.
- (10.) If, after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, or within four months next before the same, he makes, or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs.

\* \* *Unless (in cases 8, 9, 10) the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law.*

- (11.) If, after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, or within four months next before the same, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs.
- (12.) If, after the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, or at any meeting of his creditors within four months next before the same, he attempts to account for any part of his property by fictitious losses or expenses.  
If within four months next before the presentation of a bankruptcy petition by or against him or the commencement of the liquidation, he—
- (13.) By any false representation or other fraud, has obtained any property on credit, and has not paid the same, or—
- (14.) Being a trader, obtains under the false pretence of

carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud.

(15.) Being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for, unless the jury is satisfied that he had no intent to defraud, or—

(16.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs, or his bankruptcy or liquidation.

Quitting or attempting to quit England.

12. If any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation, or within four months before the same, quits England, and takes with him or attempts or makes preparation for quitting England and taking with him any part of his property to the amount of 20*l.* or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment not exceeding two years, with or without hard labour.

Certain fraudulent transactions made misdemeanors.

13. Any person shall in each of the following cases be deemed guilty of a misdemeanour, and on conviction shall be liable to be imprisoned not exceeding one year, with or without hard labour.

(1.) If, in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud.

(2.) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property.

(3.) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

False proof by creditor.

14. Any creditor in any bankruptcy or liquidation, or composition with creditors pursuant to the Bankruptcy Act, 1869, wilfully and with intent to defraud, making any false claim, or proof, declaration, or statement of account which is untrue in any material particular, shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year, with or without hard labour.

Unpaid balance of fraudulent debt.

15. An arranging or compounding debtor under the provisions of the Bankruptcy Act, 1869, shall remain liable for the unpaid

balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

16. (a) Where a trustee in any bankruptcy reports to a court of bankruptcy that in his opinion a bankrupt has been guilty of any offence under this Act, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the court shall, if it appears to the court that there is reasonable probability of conviction, order the trustee to prosecute the bankrupt for such offence. Prosecution of bankrupt by order of court.

17. When such prosecution is so ordered, then, on the production of the order of the court, the expenses of the prosecution shall be allowed, paid, and borne as expenses of prosecution for felony are allowed, paid, and borne. (b) Expenses of prosecution.

### *The Bankruptcy Act, 1883.*

46 & 47 VICT. c. 52.

#### *Preliminary.*

1. This Act may be cited as "The Bankruptcy Act, 1883."

Short title.

2. This Act shall not, except so far as is expressly provided, extend to Scotland or Ireland. Extent of Act.

3. This Act shall, except as by this Act otherwise provided, commence and come into operation from and immediately after the 31st December, 1883. Commencement of Act.

#### *PART I.—Proceedings from Act of Bankruptcy to Discharge.*

##### *Acts of Bankruptcy.*

4. (1.) A debtor commits an act of bankruptcy in each of the following cases :— Acts of bankruptcy.

(a.) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally :

(b.) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or any part thereof :

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(a) See *post*, sect. 164 of the Bankruptcy Act, 1883.

(b) The Treasury will not, however, pay the costs of the prosecuting solicitor, or any part thereof, if the trustee should abscond after the committal of the bankrupt for trial but before the trial. The author states this upon his own bitter experience.

- (c.) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt :
  - (d.) If, with intent to defeat or delay his creditors, he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house :
  - (e.) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any court, or in any civil proceeding in the High Court :
  - (f.) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself :
  - (g.) If a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in England, or, by leave of the court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the court that he has a counter-claim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained :
  - (h.) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.
- (2.) A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

### *Receiving Order.*

Jurisdiction to  
make receiving  
order.

5. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

6. (1.) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

Conditions on which creditor may petition.

- (a.) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds, and
- (b.) The debt is a liquidated sum, payable either immediately or at some certain future time, and
- (c.) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and
- (d.) The debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England.

(2.) If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

7. (1.) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

Proceedings and order on creditor's petition.

(2.) At the hearing the court shall require proof of the debt of the petitioning creditor of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3.) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(4.) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.

(5.) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of

any debt which may be established against him in due course of law, and of the costs of establishing the debt, may instead of dismissing the petition stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6.) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7.) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

Debtor's petition  
and order  
thereon.

8. (1.) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2.) A debtor's petition shall not, after presentment, be withdrawn without the leave of the court.

Effect of receiv-  
ing order.

9. (1.) On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the court and on such terms as the court may impose.

(2.) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

Discretionary  
powers as to  
appointment of  
receiver and stay  
of proceedings.

10. (1.) The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(2.) The court may at any time after the presentation of a bankruptcy petition stay any action, execution, or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of order  
staying pro-  
ceedings.

11. Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be

served by sending a copy thereof, under the seal of the court, by prepaid post letter to the address for service of the plaintiff or other party prosecuting such proceeding.

12. (1.) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver. Power to appoint special manager.

(2.) The special manager shall give security and account in such manner as the Board of Trade may direct.

(3.) The special manager shall receive such remuneration as the creditors may by resolution at an ordinary meeting determine, or in default of any such resolution as may be prescribed.

13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, the court by which the order is made, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner. Advertisement of receiving order.

14. If in any case where a receiving order has been made on a bankruptcy petition it shall appear to the court by which such order was made, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in Scotland or in Ireland, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the Bankrupt or Insolvent Laws of Scotland or Ireland, the said court after such inquiry as to it shall seem fit, may rescind the receiving order and stay all proceedings, on, or dismiss the petition upon such terms, if any, as the court may think fit. Power to court to annul receiving order in certain cases.

#### *Proceedings consequent on Order.*

15. (1.) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property. First and other meetings of creditors.

(2.) With respect to the summoning of and proceedings at the first and other meetings of the creditors, the rules in the first schedule shall be observed.

16. (1.) Where a receiving order is made against a debtor, Debtor's statement of affairs.

any debt which may be established by law, and of the costs of establishing the same; and in dismissing the petition stay all such time as may be required to the debt.

(6.) Where proceedings of the delay caused by the cause it thinks just, may be given, and described or as submitted within the following

(7.) A creditor the petition of the debtor, within date of the order.

Debtor's petition and order thereon.

8. (1.) A debtor on the petition of a creditor, within the date of the order.

deemed an either case, for special reasons, extend the

debtor of court shall if the debtor fails without reasonable excuse to comply

(2.) Requirements of this section, the court may, on the draw of the official receiver, or of any creditor, adjudge

Effect of receiving order.

9 bankrupt.

Any person stating himself in writing to be a creditor of a bankrupt may, personally or by agent, inspect this statement at any reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

### *Public Examination of Debtor.*

17. (1.) Where the court makes a receiving order it shall hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2.) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3.) The court may adjourn the examination from time to time.

(4.) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5.) The official receiver shall take part in the examination of the debtor; and for the purpose thereof, if specially authorised by the Board of Trade, may employ a solicitor with or without counsel.

(6.) If a trustee is appointed before the conclusion of the examination he may take part therein.



as the nature of the case  
we admit, apply thereto,  
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iently investigated, it shall, ot be  
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after the day appointed for the first meeting

Effect of compo-  
tion or scheme.

### *Composition or Scheme of Arrangement.*

(1.) The creditors may at the first meeting or any adjourn-  
whereof, by special resolution, resolve to entertain a proposal  
a composition in satisfaction of the debts due to them from the  
debtor, or a proposal for a scheme of arrangement of the debtor's  
affairs.

(2.) The composition or scheme shall not be binding on the  
creditors unless it is confirmed by a resolution passed (by a  
majority in number representing three-fourths in value of all the  
creditors who have proved) at a subsequent meeting of the creditors,  
and is approved by the court.

Any creditor who has proved his debt may assent to or dissent  
from such composition or scheme by a letter addressed to the  
official receiver in the prescribed form, and attested by a witness,  
so as to be received by such official receiver not later than the day  
preceding such subsequent meeting, and such creditor shall be  
taken as being present and voting at such meeting.

(3.) The subsequent meeting shall be summoned by the official  
receiver by not less than seven days' notice, and shall not be held  
until after the public examination of the debtor is concluded.  
The notice shall state generally the terms of the proposal,  
and shall be accompanied by a report of the official receiver  
thereon.

(4.) The debtor or the official receiver may, after the com-  
position or scheme is accepted by the creditors, apply to the  
court to approve it, and notice of the time appointed for  
hearing the application shall be given to each creditor who has  
proved.

(5.) The court shall, before approving a composition or  
scheme, hear a report of the official receiver as to the terms of  
the composition or scheme and as to the conduct of the debtor,  
and any objections which may be made by or on behalf of any  
creditor.

(6.) If the court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the court shall, or if any such facts are proved as would under this Act justify the court in refusing, qualifying, or suspending the debtor's discharge, the court may, in its discretion, refuse to approve the composition or scheme.

(7.) If the court approves the composition or scheme, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the court.

(8.) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy.

(9.) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(10.) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of Court.

(11.) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice on undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section any debt provable in other respects, which has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

(12.) If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, Part V. of this Act shall apply to the trustee as if he were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

(13.) Part III. of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in the last preceding sub-section.

(14.) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(15.) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

19. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Effect of composition or scheme.

### *Adjudication of Bankruptcy.*

20. (1.) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court may allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

Adjudication of bankruptcy where composition not accepted or approved.

(2.) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the court by which the adjudication is made, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication.

21. (1.) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

Appointment of trustee.

(2.) The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the

board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(3.) Provided that where the board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.

(4.) The appointment of a trustee shall take effect as from the date of the certificate.

(5.) The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.

(6.) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

(7.) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

(8.) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of  
inspection.

22. (1.) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution, appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.

(2.) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment,

at least once a month ; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(6.) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body ; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee.

23. (1.) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs ; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

Power to accept composition or scheme after bankruptcy adjudication.

(2.) If the court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare.

(3.) If default is made in payment of any instalment due in

pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

*Control over Person and Property of Debtor.*

Duties of debtor  
as to discovery  
and realisation  
of property.

24. (1.) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination, and give such information as the meeting may require.

(2.) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor, or person interested.

(3.) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property, and the distribution of the proceeds among his creditors.

(4.) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor  
under certain  
circumstances.

25. (1.) The court may, by warrant addressed to any constable

or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances :

- (a.) If, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him.
- (b.) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy.
- (c.) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee.
- (d.) If, without good cause shown, he fails to attend any examination ordered by the court.

Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

(2.) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

26. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, post letters addressed to the debtor at any place, or places, mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

Re-direction of  
debtor's letters.



pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

*Control over Person and Property of Debtor.*

Duties of debtor  
as to discovery  
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of property.

24. (1.) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination, and give such information as the meeting may require.

(2.) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor, or person interested.

(3.) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property, and the distribution of the proceeds among his creditors.

(4.) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor  
under certain  
circumstances.

25. (1.) The court may, by warrant addressed to any constable



or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances :

- (a.) If, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him.
- (b.) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy.
- (c.) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee.
- (d.) If, without good cause shown, he fails to attend any examination ordered by the court.

Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

(2.) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

26. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, post letters addressed to the debtor at any place, or places, mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

Re-direction of  
debtor's letters.

Discovery of  
debtor's  
property.

27. (1.) The court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2.) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

(3.) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4.) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official receiver or trustee, order him to pay to the receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(5.) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the court may seem just.

(6.) The court may, if it think fit, order that any person who if in England would be liable to be brought before it under this section shall be examined in Scotland or Ireland, or in any other place out of England.

#### *Discharge of Bankrupt.*

Discharge of  
bankrupt.

28. (1.) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open court.

(2.) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, and may either grant or refuse

an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property : Provided that the court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under this Act, or Part II. of the Debtors Act, 1869, or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order, or suspend the operation of the order for a specified time, or grant an order of discharge, subject to such conditions as aforesaid.

(3.) The facts hereinbefore referred to are—

- (a.) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy :
- (b.) That the bankrupt has continued to trade after knowing himself to be insolvent :
- (c.) That the bankrupt has contracted any debt provable in the bankruptcy, without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it :
- (d.) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living :
- (e.) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him :
- (f.) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors :
- (g.) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a statutory composition or arrangement with his creditors :
- (h.) That the bankrupt has been guilty of any fraud or fraudulent breach of trust :

(4.) For the purposes of this section the report of the official receiver shall be *prima facie* evidence of the statements therein contained.

(5.) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court

may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

(6.) The court may, as one of the conditions referred to in this section, require the bankrupt to consent to judgment being entered against him by the official receiver or trustee for any balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge; but in such case execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts.

(7.) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of court; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent  
settlements.

29. In either of the following cases; that is to say,

- (1.) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (2.) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order  
of discharge.

30. (1.) An order of discharge shall not release the bankrupt from any debt on a recognisance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or

other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence : and he shall not be discharged from such expected debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(2.) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3.) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

(4.) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

31. Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act, 1869, and the provisions of that Act shall apply to proceedings under this section.

Undischarged bankrupt obtaining credit to extent of 20*l.* to be guilty of misdemeanour.

## PART II.—*Disqualifications of Bankrupt.*

32. (1.) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

Disqualifications of bankrupt.

- (a.) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords :
- (b.) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof :
- (c.) Being appointed or acting as a justice of the peace :
- (d.) Being elected to, or holding, or exercising the office of mayor, alderman, or councillor :
- (e.) Being elected to, or holding, or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or a member of a school board, highway board, burial board, or select vestry.

(2.) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(a.) the adjudication of bankruptcy against him is annulled ;  
or

(b.) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

(3.) The disqualifications imposed by this section shall extend to all parts of the United Kingdom.

Vacating of seat  
in House of  
Commons.

33. (1.) If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.

Vacating of  
municipal and  
other offices.

34. If a person is adjudged bankrupt whilst holding the office of mayor, alderman, councillor, guardian, overseer, or member of a sanitary authority, school board, highway board, burial board, or select vestry, his office shall thereupon become vacant.

Power for court  
to annul adjudication  
in certain  
cases.

35. (1.) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order, annul the adjudication.

(2.) Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

(3.) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

Meaning of pay-  
ment of debts in  
full.

36. (1.) For the purposes of this part of this Act, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

PART III.—*Administration of Property.*

*Proof of Debts.*

37. (1.) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy. Description of debts provable in bankruptcy.

(2.) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3.) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4.) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5.) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

(6.) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7.) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may direct the value to be assessed, before the court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8.) "Liability" shall, for the purposes of this Act, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.



Mutual credit  
and set-off.

38. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

Rules as to proof  
of debts.

39. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second schedule, the rules in that schedule shall be observed.

Priority of debts  
—38 & 39 Vict.  
c. 60.

40. (1.) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts,—

- (a.) All parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before such time, and all assessed taxes, land tax, property or income tax, assessed on him up to the fifth day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment;
- (b.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds; and
- (c.) All wages of any labourer or workman, not exceeding fifty pounds, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2.) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3.) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.



(4.) Subject to the provisions of this Act all debts proved in the bankruptcy shall be paid *pari passu*.

(5.) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

(6.) Nothing in this section shall alter the effect of sect. 5 of 28 & 29 Vict. c. 86(a), or shall prejudice the provisions of the Friendly Societies Act, 1875.

41. (1.) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

Preferential claim in case of apprenticeship.

(2.) Where it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

42. (1.) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available for only one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Power to landlord to distrain for rent.

(2.) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not

(a) See *ante*, p. 234.

exceed fifty pounds, or of a deceased person who dies insolvent.

*Property available for Payment of Debts.*

Relation back of trustee's title.

43. The bankruptcy of a debtor, whether the same takes place on a debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Description of bankrupt's property divisible amongst creditors.

44. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

- (1.) Property held by the bankrupt on trust for any other person:
- (2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

- (i.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and,
- (ii.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and,
- (iii.) All goods being at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

*Effect of Bankruptcy on antecedent Transactions.*

45. (1.) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

Restriction of rights of creditor under execution or attachment.

(2.) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

46. (1.) Where the goods of a debtor are taken in execution, and before the sale thereof notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods to the official receiver or trustee under the order, but the costs of the execution shall be a charge on the goods so delivered, and the official receiver or trustee may sell the goods or an adequate part thereof for the purpose of satisfying the charge.

Duties of sheriff as to goods taken in execution.

(2.) Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

(3.) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

47. (1.) Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after

Avoidance of voluntary settlement

marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2.) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

(3.) "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Avoidance of preferences in certain cases.

43. (1.) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2.) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Protection of *bona fide* transactions without notice.

49. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(a.) Any payment by the bankrupt to any of his creditors,

(b.) Any payment or delivery to the bankrupt,

(c.) Any conveyance or assignment by the bankrupt for valuable consideration,

(d.) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration ;

Provided that both the following conditions are complied with, namely,—

- (1.) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and
- (2.) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

### *Realisation of Property.*

50. (1.) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. Possession of property by trustee.

(2.) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3.) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4.) Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.

(5.) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(6.) Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he

shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

Seizure of  
property of  
bankrupt.

51. Any person acting under warrant of court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search-warrant to any constable or officer of the court, who may execute it according to its tenor.

Sequestration of  
ecclesiastical  
benefice—34 & 35  
Vict. c. 43—34 &  
35 Vict. c. 45.

52. (1.) Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of *levari facias* founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy in respect of a debt provable in the bankruptcy, except a sequestration issued before the date of the receiving order by or on behalf of a person who at the time of the issue thereof had not notice of an act of bankruptcy committed by the bankrupt, and available for grounding a receiving order against him.

(2.) The bishop of the diocese in which the benefice is situate may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt, by quarterly instalments, while he performs the duties of the benefice.

(3.) The sequestrator shall also pay out of the profits of the benefice the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order not exceeding fifty pounds.

(4.) Nothing in this section shall prejudice the operation of the Ecclesiastical Dilapidations Act, 1871, or the Sequestration Act, 1871, or any mortgage or charge duly created under any Act of Parliament before the commencement of the bankruptcy on the profits of the benefice.

Appropriation of  
portion of pay  
or salary to  
creditors.

53. (1.) Where a bankrupt is an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or

salary as the court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section the court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

(2.) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half pay, or pension, or to any compensation granted by the Treasury, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3.) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half pay, or compensation of any bankrupt to be forfeited.

54. (1.) Until a trustee is appointed the official receiver shall be the trustee for the purposes of this Act, and immediately on a debtor being adjudged bankrupt the property of the bankrupt shall vest in the trustee. Vesting and transfer of property.

(2.) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

(3.) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4.) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

55. (1.) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within three Disclaimer of onerous property.



months after the first appointment of a trustee, disclaim the property.

Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within two months after he first became aware thereof.

(2.) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3.) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

(4.) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5.) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6.) The court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act, in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person



entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

Provided always, that where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7.) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

56. Subject to the provisions of this Act, the trustee may do all or any of the following things :

Powers of trustee to deal with property.

- (1.) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book-debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :
- (2.) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof :
- (3.) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt :
- (4.) Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act :

- (5.) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and sects. 56 to 73 (both inclusive) of 3 & 4 Will. 4, c. 74 (a) shall extend and apply to proceedings under this Act, as if those sections were here re-enacted and made applicable in terms to those proceedings.

Powers exercisable by trustee with permission of committee of inspection.

57. The trustee may, with the permission of the committee of inspection, do all or any of the following things :

- (1.) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same :
- (2.) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt :
- (3.) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection :
- (4.) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit :
- (5.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts :
- (6.) Refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on :
- (7.) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy :
- (8.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person :
- (9.) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not

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(a) See *ante*, p. 300.

be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

*Distribution of Property.*

58. (1.) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. Declaration and distribution of dividends.

(2.) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3.) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4.) Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5.) When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

59. (1.) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. Joint and separate dividends.

(2.) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

60. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communica- Provision for creditors residing at a distance, &c.

tion they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy. The subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

**Right of creditor who has not proved debt before declaration of a dividend.**

61. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

**Final dividend.**

62. When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

**No action for dividend.**

63. No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

**Power to allow bankrupt to manage property—Allowance to bankrupt for maintenance or service.**

64. (1.) The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

(2.) The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just, to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services

if he is engaged in winding-up his estate, but any such allowance may be reduced by the court.

65. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition. Right of bankrupt to surplus.

**PART. IV.—Official Receivers and Staff of Board of Trade.**

66. As to appointment by Board of Trade of official receivers of debtors' estates.

68. (1.) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate. Status of official receiver.

(2.) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3.) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4.) The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

69. As regards the debtor, it shall be the duty of the official receiver— Duties of official receiver as regards the debtor's conduct.

(1.) To investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under the Debtors Act, 1869, or any amendment thereof, or under this Act, or which would justify the court in refusing, suspending, or qualifying an order for his discharge.

(2.) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct.

(3.) To take such part as may be directed by the Board of Trade in the public examination of the debtor.

(4.) To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

70. (1.) As regards the estate of a debtor it shall be the duty of the official receiver, Duties of official receiver as to debtor's estate.

(a.) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof:

(b.) To authorise the special manager to raise money or make advances for the purposes of the estate in any case

where, in the interests of the creditors, it appears necessary so to do :

- (c.) To summon and preside at the first meeting of creditors :
- (d.) To issue forms of proxy for use at the meetings of creditors :
- (e.) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs :
- (f.) To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise :
- (g.) To act as trustee during any vacancy in the office of trustee.

(2.) For the purpose of his duties as interim receiver or manager the official receiver shall have the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

Provided that when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3.) Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the board from time to time direct.

71. Power for Board of Trade to appoint and dismiss officers.

#### PART V.—*Trustees in Bankruptcy.*

##### *Remuneration of Trustee.*

Remuneration of trustee.

72. (1.) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2.) If one fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Board of Trade

that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration.

(3.) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4.) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the taxing officer may allow.

(5.) A trustee shall not under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

*Costs.*

73. (1.) Where a trustee or manager receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself. Allowance and taxation of costs.

(2.) Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services.

(3.) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of particular matters out of which such charges arise, has been duly sanctioned.

(4.) Every such person shall, on request of the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.



*Receipts, Payments, Accounts, Audit.*

Payment of  
money into Bank  
of England.

74. (1.) An account called the Bankruptcy Estates Account shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2.) The account of the Accountant in Bankruptcy at the Bank of England shall be transferred to the Bankruptcy Estates Account.

(3.) Every trustee in bankruptcy shall in such manner and at such times as the Board of Trade with the concurrence of the Treasury direct, pay the money received by him to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(4.) Provided that if it appears to the committee of inspection that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select.

Such account shall be opened and kept by the trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

The trustee shall make his payments into and out of such local bank in the prescribed manner.

(5.) Subject to any general rules relating to small bankruptcies under Part VII. of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account.

(6.) If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default.

(7.) All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner.



75. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account. Trustee not to pay into private account.

76. As to investment by Treasury of surplus funds.

78. (1.) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee. Audit of trustee's accounts.

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the board with such vouchers and information as the board may require, and the board may at any time require the production of and inspect any books or accounts kept by the trustee.

(4.) When any such account has been audited one copy thereof shall be filed and kept by the board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

79. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors. The trustee to furnish list of creditors.

80. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the court, personally or by his agent inspect any such books. Books to be kept by trustee.

81. (1.) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Board of Trade a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form. Annual statement of proceedings.

(2.) The Board of Trade shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

#### *Release of Trustee.*

82. (1.) When the trustee has realised all the property of Release of trustee.

the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the board, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2.) Where the release of a trustee is withheld the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

#### *Official Name.*

Official name of trustee.

83. The trustee may sue and be sued by the official name of "the trustee of the property of \_\_\_\_\_, a bankrupt," inserting the name of the bankrupt, and by that name may in any part of the British dominions or elsewhere hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

#### *Appointment and Removal.*

Power to appoint joint or successive trustees.

84. (1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

(2.) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first

named declining to accept the office of trustee, or failing to give security, or not being approved of by the Board of Trade.

85. If a receiving order is made against a trustee he shall thereby vacate his office of trustee. Office of trustee vacated by insolvency.

86. (1.) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee. Removal of trustee.

(2.) If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Board may remove him from his office, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court.

87. (1.) If a vacancy occurs in the office of a trustee the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment. Proceedings in case of vacancy in office of trustee.

(2.) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3.) If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver shall report the matter to the Board of Trade, and the board may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

(4.) During any vacancy in the office of trustee the official receiver shall act as trustee.

#### *Voting powers of Trustee.*

88. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee. Limitation of voting powers of trustee.

#### *Control over Trustee.*

89. (1.) Subject to the provisions of this Act the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall Discretionary powers of trustee and control thereof.

in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.

(3.) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4.) Subject to the provisions of this Act the trustee shall use his own discretion in the management of the estate and its distribution amongst the creditors.

Appeal to court  
against trustee.

90. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board  
of Trade over  
trustees.

91. (1.) The Board of Trade shall take cognisance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the board by any creditor in regard thereto, the board shall inquire into the matter and take such action thereon as may be deemed expedient.

(2.) The board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the board think fit, apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

(3.) The board may also direct a local investigation to be made of the books and vouchers of the trustee.

#### PART VI.—*Constitution, Procedure, and Powers of Court.* *Jurisdiction.*

Jurisdiction to be  
exercised by  
High Court and  
County Courts.

92. (1.) The courts having jurisdiction in bankruptcy shall be the High Court and the County Courts.

(2.) But the Lord Chancellor may from time to time, by order under his hand, exclude any County Court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to the High Court, or to any other County Court or courts, and may from time to time revoke or vary any order so made. The Lord Chancellor may, in like manner and subject to the like conditions,

detach the district of any County Court or any part thereof from the district and jurisdiction of the High Court.

(3.) The term "district," when used in this Act with reference to a County Court, means the district of the court for the purposes of bankruptcy jurisdiction.

(4.) A County Court which, at the commencement of this Act, is excluded from having bankruptcy jurisdiction, shall continue to be so excluded until the Lord Chancellor otherwise orders.

(5.) Periodical sittings for the transaction of bankruptcy business by County Courts having jurisdiction in bankruptcy shall be holden at such times and at such intervals as the Lord Chancellor shall prescribe for each such court.

93. (1.) From and after the commencement of this Act the London Bankruptcy Court shall be united and consolidated with and form part of the Supreme Court of Judicature, and the jurisdiction of the London Bankruptcy Court shall be transferred to the High Court.

Consolidation of London Bankruptcy Court with Supreme Court of Judicature.

(2.) For the purposes of this union, consolidation, and transfer, and of all matters incidental thereto and consequential thereon, the Supreme Court of Judicature Act, 1873, as amended by subsequent Acts, shall, subject to the provisions of this Act, have effect as if the union, consolidation, and transfer had been effected by that Act, except that all expressions referring to the time appointed for the commencement of that Act shall be construed as referring to the commencement of this Act, and subject as aforesaid, this Act and the said above-mentioned Acts shall be read and construed together.

94. (1.) Subject to general rules, and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and Acts amending it,—

Transaction of bankruptcy business by special judge of High Court.

(a.) All matters pending in the London Bankruptcy Court at the commencement of this Act; and

(b.) All matters which would have been within the exclusive jurisdiction of the London Bankruptcy Court, if this Act had not passed; and

(c.) All matters in respect of which jurisdiction is given to the High Court by this Act,

shall be assigned to such Division of the High Court as the Lord Chancellor may from time to time direct.

(2.) All such matters shall, subject as aforesaid, be ordinarily transacted and disposed of by or under the direction of one of the judges of the High Court, and the Lord Chancellor shall from time to time assign a judge for that purpose.

(3.) Provided that during vacation, or during the illness of the judge so assigned, or during his absence or for any other reasonable cause such matters, or any part thereof, may be transacted and disposed of by or under the directions of any

judge of the High Court named for that purpose by the Lord Chancellor.

(4.) Subject to the provisions of this Act, the officers, clerks, and subordinate persons who are, at the commencement of this Act, attached to the London Bankruptcy Court, and their successors, shall be officers of the Supreme Court of Judicature, and shall be attached to the High Court.

(5.) Subject to general rules, all bankruptcy matters shall be entitled, "In bankruptcy."

Petition where to be presented.

95. (1.) If the debtor against or by whom a bankruptcy petition is presented has resided or carried on business within the London bankruptcy district as defined by this Act for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any County Court, or is not resident in England, or if the petitioning creditor is unable to ascertain the residence of the debtor, the petition shall be presented to the High Court.

(2.) In any other case the petition shall be presented to the County Court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition.

(3.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

Definition of the London Bankruptcy District.

96. The London Bankruptcy District shall, for the purposes of this Act, comprise the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any County Court described as a Metropolitan County Court in the list contained in the third schedule.

Transfer of proceedings from court to court.

97. (1.) Subject to the provisions of this Act, every court having original jurisdiction in bankruptcy shall have jurisdiction throughout England.

(2.) Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one court to another court, or may by the like authority be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

(3.) If any question of law arises in any bankruptcy proceeding in a County Court which all the parties to the proceeding desire, or which one of them and the judge of the County Court may desire, to have determined in the first instance in the High Court, the judge shall state the facts, in the form of a special case, for the opinion of the High Court. The special

case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

98. Subject to the provisions of this Act and to general rules the judge of the High Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction. Exercise in chambers of High Court jurisdiction.

99. (1.) The registrars in bankruptcy of the High Court, and the registrars of a County Court having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the court. Jurisdiction in bankruptcy of registrar.

(2.) Subject to general rules limiting the powers conferred by this section, a registrar shall have power—

- (a.) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon :
- (b.) To hold the public examination of debtors :
- (c.) To grant orders of discharge where the application is not opposed :
- (d.) To approve compositions or schemes of arrangement when they are not opposed :
- (e.) To make interim orders in any case of urgency :
- (f.) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers :
- (g.) To hear and determine any unopposed or *ex parte* application :
- (h.) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

(3.) The registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

(4.) A registrar shall not have power to commit for contempt of court.

(5.) The Lord Chancellor may from time to time by order direct that any specified registrar of a County Court shall have and exercise all the powers of a bankruptcy registrar of the High Court.

100. A County Court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the court, have all the powers and jurisdiction of the High Court, and the orders of the court may be enforced accordingly in manner prescribed. Powers of County Court.



Board of Trade  
to make pay-  
ments in accord-  
ance with direc-  
tions of court.

101. Where any moneys or funds have been received by an official receiver or by the Board of Trade, and the court makes an order declaring that any person is entitled to such moneys or funds, the Board of Trade shall make an order for the payment thereof to the person so entitled as aforesaid.

General power of  
bankruptcy  
courts.

102. (1.) Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognisance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Provided that the jurisdiction hereby given shall not be exercised by the County Court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not, in the opinion of the judge, exceed in value two hundred pounds.

(2.) A court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

(3.) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the court itself, or which the court thinks ought to be tried by a jury, the court may, if it thinks fit, direct the trial to be had with a jury, and the trial may be had accordingly, in the High Court in the same manner as if it were the trial of an issue of fact in an action, and in the County Court in the manner in which jury trials in ordinary cases are by law held in that court.

(4.) Where a receiving order has been made in the High Court under this Act, the judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against the bankrupt.

(5.) Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Board of Trade or by an official receiver or any other officer of the Board of Trade under any power conferred by this Act, the court may, on the application of the Board of Trade or an official receiver or other duly authorised person, order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the court may also, if it shall think fit, upon any such application make an immediate order for the committal of such



defaulting trustee, debtor, or other person ; provided that the power given by this sub-section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

*Judgment Debtors.*

103. (1.) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtors Act, 1869, (a) now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned. Judgment debtor's summons to be bankruptcy business.

(2.) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the bankruptcy registrars of the High Court

(3.) Any order made under this section may, at any time, in like manner be rescinded or varied.

(4.) Every County Court within the jurisdiction of which a judgment debtor is or resides shall have jurisdiction under section five of the Debtors Act, 1869, although the amount of the judgment debt may exceed fifty pounds.

(5.) Where, under section five of the Debtors Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

(6.) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

*Appeals.*

104. (1.) Every court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction. Appeals in bankruptcy.

(2.) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows :

(a.) An appeal shall lie from the order of a County Court to Her Majesty's Court of Appeal.

(b.) An appeal shall lie from the order of the High Court to Her Majesty's Court of Appeal :

(c.) An appeal shall, with the leave of Her Majesty's Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords :

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(a) See *ante*, p. 137.

- (d.) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

*Procedure.*

Discretionary  
powers of the  
court.

105. (1.) Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court: Provided that where any issue is tried by a jury the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried shall otherwise order.

(2.) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3.) The court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4.) Where by this Act or by general rules, the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court may think fit to impose.

(5.) Subject to general rules, the court may in any matter take the whole or any part of the evidence either *vivâ voce*, or by interrogatories, or upon affidavit, or by commission abroad.

(6.) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Consolidation of  
petitions.

106. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change  
carriage of  
proceedings.

107. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

Continuance of  
proceedings on  
death of debtor.

108. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

Power to stay  
proceedings.

109. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

Power to present  
petition against  
one partner.

110. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm

may present a petition against any one or more partners of the firm without including the others.

111. Where there are more respondents than one to a petition the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. Power to dismiss petition against some respondents only.

112. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the court in which the first-mentioned petition is in course of prosecution, and, unless the court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the court may give such directions for consolidating the proceedings under the petitions as it thinks just. Property of partners to be vested in same trustee.

113. Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the court directs. Actions by trustee and bankrupt's partners.

114. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt. Actions on joint contracts.

115. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner and verified on oath, or otherwise as the court may direct. Proceedings in partnership name.

### *Officers.*

116. (1.) No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons. Disabilities of officers.

(2.) No registrar or official receiver or other officer attached to any such court shall, during his continuance in office, either

directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the court, and if he does so act he shall be liable to be dismissed from office.

Provided that nothing in this section shall affect the right of any registrar or officer appointed before the passing of this Act to act as solicitor by himself, his clerk, or partner to the extent permitted by section sixty-nine of the Bankruptcy Act, 1869.

*Orders and Warrants of Court.*

Enforcement of orders of courts throughout the United Kingdom.

117. Any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the court required to enforce it in a case of bankruptcy within its own jurisdiction.

Courts to be auxiliary to each other.

118. The High Court, the County Courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Warrants of Bankruptcy Courts.

119. (1.) Any warrants of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the Acts of Parliament in that behalf.

(2.) A search-warrant issued by a court having jurisdiction in

bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search-warrant for property supposed to be stolen may be executed according to law.

120. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding one hundred pounds. Commitment to prison.

#### PART VII.—*Small Bankruptcies.*

121. When a petition is presented by or against a debtor, if the court is satisfied by affidavit or otherwise, or the official receiver reports to the court that the property of the debtor is not likely to exceed in value three hundred pounds, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications: Summary administration in small cases.

- (1.) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy;
- (2.) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection;
- (3.) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

122. (1.) Where a judgment has been obtained in a County Court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the County Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the County Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just. Power for County Court to make administration order instead of order for payment by instalments.

(2.) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the County Court may, if it thinks fit, set aside the order.

(3.) Where, in the opinion of the County Court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the County Court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter County Court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4.) Where it appears to the registrar of the County Court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5.) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a County Court, except with the leave of that County Court, and on such terms as that court may impose; and any County Court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6.) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

(7.) The order shall be carried into effect in such manner as may be prescribed by general rules.

(8.) Money paid into court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

(9.) Notice of the order shall be sent to the registrar of County Court judgments, and be posted in the office of the County Court of the district in which the debtor resides, and

sent to every creditor notified by the debtor, or who has proved.

(10.) Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11.) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12.) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13.) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14.) In computing the salary of a registrar under the County Courts Acts every creditor scheduled, not being a judgment creditor, shall count as a plaintiff.

#### PART VIII.—*Supplemental Provisions.*

##### *Application of Act.*

123. A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under the Companies Act, 1862. Exclusion of partnerships and companies.

124. If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege. Privilege of Parliament.

125. (1.) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy. Administration in bankruptcy of estate of person dying insolvent.

(2.) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.



(3.) An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal personal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the court that the debtor committed an act of bankruptcy within three months prior to his decease.

(4.) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may in such case, on the application of any creditor, and on proof that the estate is insufficient to pay his debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5.) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.

(6.) With the modifications hereinafter mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7.) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(8.) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9.) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being



made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(10.) Unless the context otherwise requires, "court," in this section, means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; "creditor" means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(11.) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

126. No person, not being a trader within the meaning of the Bankruptcy Act, 1861, shall be adjudged bankrupt in respect of a debt contracted before the passing of that Act. Saving as to debts contracted before Act of 1861.

### *Evidence.*

132. (1.) A copy of the *London Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice. Gazette to be evidence.

(2.) The production of a copy of the *London Gazette* containing any notice of a receiving order, or of an order adjudicating a debtor a bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

133. (1.) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof. Evidence of proceedings at meetings of creditors.

(2.) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

134. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or proceedings had under this Act, shall, if it appears to be sealed with the seal of any court having jurisdiction in bankruptcy, or purports to be signed Evidence of proceedings in bankruptcy.

by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

Swearing of  
affidavits.

135. Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the County Palatine of Lancaster, or before any registrar of a bankruptcy court, or before any officer of a bankruptcy court authorised in writing on that behalf by the judge of the court, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace, or, in the case of a person who is out of the kingdom of Great Britain and Ireland, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid by a British minister or British consul, or by a notary public).

Death of witness.

136. In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by any court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Bankruptcy  
courts to have  
seals.

137. Every court having jurisdiction in bankruptcy under this Act, shall have a seal describing the court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of the seal, and of the signature of the judge or registrar of any such court, in all legal proceedings.

Certificate of  
appointment of  
trustee.

138. A certificate of the Board of Trade that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

Appeal from  
Board of Trade  
to High Court.

139. Where by this Act an appeal to the High Court is given against any decision of the Board of Trade, or of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Proceedings of  
Board of Trade.

140. (1.) All documents purporting to be orders or certificates made or issued by the Board of Trade, and to be sealed with the seal of the board, or to be signed by a secretary or assistant secretary of the board, or any person authorised in that behalf by the president of the board, shall be received in evidence, and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade shall be conclusive evidence of the fact so certified.

*Time.*

141. (1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas-day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happen to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

*Notices.*

142. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

*Formal Defects.*

143. (1.) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

(2.) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

*Stamp Duty.*

144. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, convey-

ance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

### *Executions.*

Sales under  
executions to be  
public.

145. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next proceeding the day of sale.

Writ of *elegit* not  
to extend to  
goods.

146. (1.) The sheriff shall not under a writ of *elegit* deliver the goods of a debtor, nor shall a writ of *elegit* extend to goods.

(2.) No writ of *levari facias* shall hereafter be issued in any civil proceeding.

### *Bankrupt Trustee.*

Application of  
Trustee Act to  
bankruptcy of  
trustee.

147. Where a bankrupt is a trustee within the Trustee Act, 1850, section thirty-two of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act and of any other Act relative thereto, shall have effect accordingly.

### *Corporations, &c.*

Acting of corpo-  
rations, partners,  
&c.

148. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or *curator bonis*.

### *Construction of former Acts, &c.*

Construction of  
Acts mentioning  
commission of  
bankruptcy, &c.

149. (1.) Where in any Act of Parliament, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.

(2.) Where by any Act or instrument, reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed

and have effect as if reference were made therein to the corresponding provisions of this Act.

150. Save as herein provided the provisions in this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Certain provisions to bind the Crown.

151. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had at the commencement of this Act, and all solicitors or other persons who had the right of audience before the Chief Judge in Bankruptcy shall have the like right of audience in bankruptcy matters in the High Court.

Saving for existing rights of audience.

152. Nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882.

Married women.

159. In every liquidation by arrangement under the Bankruptcy Act, 1869, pending at the commencement of this Act, if at any time after the commencement of this Act there is no trustee acting in the liquidation by reason of death, or for any other cause, such of the official receivers of bankrupts' estates as is appointed by the Board of Trade for that purpose shall become and be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly; but this provision shall not prejudice the right of the creditors in the liquidation to appoint a new trustee, in manner directed by the Bankruptcy Act, 1869, or the rules thereunder; and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee.

Transfer of estates on vacancy of office of trustee in liquidation under the Bankruptcy Act, 1869.

The provisions of this Act with respect to the duties and responsibilities of and accounting by a trustee in a bankruptcy under this Act shall apply as nearly as may be to a trustee acting under the provisions of this section.

160. Where a bankruptcy or liquidation by arrangement under the Bankruptcy Act, 1869, has been or is hereafter closed, any property of the bankrupt or liquidating debtor which vested in the trustee and has not been realised or distributed shall vest in such person as may be appointed by the Board of Trade for that purpose, and he shall thereupon proceed to get in, realise, and distribute the property in like manner and with and subject to the like powers and obligations, as far as applicable, as if the bankruptcy or liquidation were continuing, and he were acting as trustee thereunder.

Transfer of outstanding property on close of bankruptcy or liquidation.

161. In every bankruptcy under the Bankruptcy Act, 1869, pending at the commencement of this Act, where a registrar of the London Bankruptcy Court or of any County Court is or would hereafter but for this enactment become the trustee under the bankruptcy, such of the official receivers of bankrupts'

Transfer estates from registrars of London Court to official receiver.

estates as may be appointed by the Board of Trade for that purpose shall from and after the commencement of this Act be the trustee in the place of the registrar, and the property of the bankrupt shall pass to and vest in the official receiver accordingly.

*Unclaimed Funds or Dividends.*

Unclaimed and undistributed dividends or funds under this and former Acts.

162. (1.) Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2.) (a.) Where, after the passing of this Act, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the fourth schedule, or any petition, resolution, deed, or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(b.) The Board of Trade may at any time order such trustee or other person to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

(c.) The Board of Trade, with the concurrence of the Treasury, may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section any court having jurisdiction in bankruptcy shall have and at the instance of the person so appointed, or of the Board of Trade, may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any

necessary modifications, apply to proceedings under this section.

(3.) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4.) Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account pursuant to this section may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the Board of Trade in respect of his claim may appeal to the High Court.

(5.) The Board of Trade may at any time after the passing of this Act open the account at the Bank of England referred to in this Act as the Bankruptcy Estates Account.

*Punishment of Fraudulent Debtors.*

163. (1.) Sections eleven and twelve of the Debtors Act, 1869 (a), relating to the punishment of fraudulent debtors and imposing a penalty for absconding with property, shall have effect as if there were substituted therein for the words "if after the presentation of a bankruptcy petition against him," the words "if after the presentation of a bankruptcy petition by or against him."

Extension of penal provisions of 32 & 33 Vict. c. 62, to petitioning debtors, &c.

(2.) The provisions of the Debtors Act, 1869, as to offences by bankrupts shall apply to any person whether a trader or not in respect of whose estate a receiving order has been made as if the term "bankrupt" in that Act included a person in respect of whose estate a receiving order had been made.

164. Section sixteen of the Debtors Act, 1869, shall be construed and have effect as if the term "a trustee in any bankruptcy" included the official receiver of a bankrupt's estate, and shall apply to offences under this Act as well as to offences under the Debtors Act, 1869.

Power for court to order prosecution on report of official receiver.

165. (1.) Where there is, in the opinion of the court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, the court may commit the bankrupt or such other person for trial.

Power for court to commit for trial.

(2.) For the purpose of committing the bankrupt or such other person for trial the court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

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(a) See *ante*, p. 476.



Nothing in this sub-section shall be construed as derogating from the powers or jurisdiction of the High Court.

Public prosecutor to act in certain cases.

166. Where the court orders the prosecution of any person for any offence under the Debtors Act, 1869, or Acts amending it, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Director of Public Prosecutions to institute and carry on the prosecution.

Criminal liability after discharge or composition.

167. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

### *Interpretation.*

Interpretation of terms.

168. (1.) In this Act, unless the context otherwise requires—

“The court” means the court having jurisdiction in bankruptcy under this Act :

“Affidavit” includes statutory declarations, affirmations, and attestations on honour :

“Available act of bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made :

“Debt provable in bankruptcy” or “provable debt” includes any debt or liability by this Act made provable in bankruptcy :

“Gazetted” means published in the *London Gazette* :

“General rules” include forms :

“Goods” includes all chattels personal :

“High Court” means Her Majesty’s High Court of Justice :

“Local bank” means any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken :

“Oath” includes affirmation, statutory declaration, and attestation on honour :

“Ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution :

“Person” includes a body of persons corporate or unincorporate :

“Prescribed” means prescribed by general rules within the meaning of this Act :

“Property” includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere ; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined :

“Resolution” means ordinary resolution :



“Secured creditor” means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor :

“Schedule” means schedule to this Act :

“Sheriff” includes any officer charged with the execution of a writ or other process :

“Special resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution :

“Treasury” means the Commissioners of Her Majesty’s Treasury :

“Trustee” means the trustee in bankruptcy of a debtor’s estate.

(2.) The schedules to this Act shall be construed and have effect as part of this Act.

#### THE FIRST SCHEDULE.

##### MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than seven days notice of the time and place thereof in the *London Gazette* and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor’s statement of affairs a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor’s statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make ; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested in writing by one-fourth in value of the creditors.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor’s statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum : Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution or for or against any specified person as trustee, or member of a committee of inspection.

19. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

20. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

21. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

24. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman at the next ensuing meeting.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

## THE SECOND SCHEDULE.

### PROOF OF DEBTS.

#### *Proof in ordinary cases.*

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### *Proof by secured Creditors.*

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (a.) Where a security is so valued, the trustee may at any time redeem it on payment to the creditor of the assessed value.

(b.) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(c.) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made *bond fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor, after having valued his security subsequently realises it, or if it is realised under the provisions of rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

#### *Proof in respect of Distinct Contracts.*

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

*Periodical Payments.*

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

*Interest.*

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

*Debt payable at a future time.*

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or Rejection of Proofs.*

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision.

25. The court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

**THE THIRD SCHEDULE.****LIST OF METROPOLITAN COUNTY COURTS.**

The Bloomsbury County Court of Middlesex.  
 The Bow County Court of Middlesex.  
 The Brompton County Court of Middlesex.  
 The Clerkenwell County Court of Middlesex.  
 The Lambeth County Court of Surrey.  
 The Marylebone County Court of Middlesex.  
 The Shoreditch County Court of Middlesex.  
 The Southwark County Court of Surrey.  
 The Westminster County Court of Middlesex.  
 The Whitechapel County Court of Middlesex.

## PART IV.

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### STATUTES RELATING TO THE CRIMINAL LAW.

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*An Act to give relief to Persons who may refuse or be unwilling from alleged conscientious Motives to be sworn in Criminal Proceedings.*

24 & 25 VICT. c. 66.

Declaration in  
lieu of oath

1. If any person called as a witness in any court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn to make a solemn affirmation or declaration in the form in this section of the Act contained, which shall be of the same force and effect as an oath in the usual form.

Effect of false  
declaration.

2. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, such person shall incur the penalties of wilful and corrupt perjury.

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### *Accessories and Abettors Act.*

24 & 25 VICT. c. 94.

Accessories  
before the fact.

1. Accessories *before* the fact to any felony may be indicted, tried, convicted, and punished as principals.

2. Whosoever shall counsel, procure, or command any other person to commit any felony, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after his conviction, or may be indicted and convicted of a substantive felony, whether the principal felon shall, or shall not have been

previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as an accessory before the fact to the same felony.

3. Similar enactment as to accessories *after* the fact.

Accessories  
*after* the fact.

4. Accessories *after* the fact to any felony (except where otherwise enacted) shall be liable at the discretion of the court to be imprisoned for not exceeding two years, with or without hard labour, and the court may require the offender to enter into his own recognisances, and to find sureties both or either for keeping the peace in addition to such punishment, provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

5. If any principal offender shall be convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact in the same manner as if such principal felon had been attainted thereof, and every such accessory shall upon conviction suffer the same punishment as he would have suffered if the principal had been attainted.

Prosecution of  
accessory.

6. Any number of accessories at different times to any felony, and any number of receivers at different times of property stolen at one time may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding the principal felon shall not be included in the same indictment or shall not be in custody or amenable to justice.

Several acces-  
sories may be  
included in one  
indictment.

7. Where any felony shall have been committed within England or Ireland, an accessory before or after the fact may be tried by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which the act, by reason whereof such person shall have become such accessory, shall have been committed, and in every other case by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which such person shall be apprehended or be in custody.

Trial of acces-  
sories.

8. Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanour, shall be liable to be tried, indicted, and punished as a principal offender.

Abettor in  
misdemeanour.

### *Larceny, &c., Act.*

24 & 25 VICT. c. 96.

1. In the interpretation of this Act—

“Document of Title to Goods” shall include any bill of lading, India warrant, dock warrant, warehouse-keeper’s certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession

Interpretation of  
terms.



or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

"Document of Title to Lands" shall include any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of any real estate.

"Trustee" shall mean a trustee on some express trust created by some deed, will, or instrument in writing, and shall include the heir or personal representative of any such trustee and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer, acting under any present or future Act relating to joint-stock companies or bankruptcy.

"Valuable security" shall include any order, exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, or in any fund of any body corporate, company, or society, or to any deposit in any bank, and shall also include any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money, and any document of title to lands or goods as hereinbefore defined.

"Property" shall include every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything required by such conversion or exchange, whether immediately or otherwise.

"Night" shall commence at 9 p.m. and conclude at 6 a.m.

Fraudulent  
conversion by  
bailees.

3. A bailee of any chattel, money, or valuable security fraudulently taking or converting the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, but this section shall not extend to any offence punishable on summary conviction.

Punishment for  
simple larceny.

4. Whosoever shall be convicted of simple larceny, or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable at the discretion of the court to be kept in penal servitude for [five] years, or to be imprisoned not exceeding two years with or



without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.

5. Three larcenies committed within six months from the first to the last may be inserted in the same indictment against the same person. Several larcenies.

6. If it shall appear upon the trial that the property alleged to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than six months elapsed between the first and last, and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have taken place within six months from the first to the last. Where single taking charged and several takings proved.

7. Whosoever shall commit the offence of simple larceny after a previous conviction for felony shall be liable, at the discretion of the court, to be kept in penal servitude not exceeding ten years, and not less than [five] years, or to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping. Larceny after conviction of felony.

8. Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been previously convicted of an indictable misdemeanour punishable under this Act, shall be liable, at the discretion of the court, to be kept in penal servitude not exceeding seven years, and not less than [five] years, or to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping. Larceny after conviction of indictable misdemeanour under this Act.

9. Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been twice summarily convicted of any of the offences punishable upon summary conviction under the 7 & 8 Geo. 4, cc. 29 or 30, or the 9 Geo. 4, cc. 55 or 56, or the 10 & 11 Vict. c. 82, or the 11 & 12 Vict. c. 59, or sects. 3, 4, 5, and 6 of the 14 & 15 Vict. c. 92, or this Act, or the 24 & 25 Vict. c. 97, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude not exceeding seven and not less than [five] years, or to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping. Larceny after two summary convictions.

*As to Larceny of Cattle and other Animals.*

10. Whosoever shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, Stealing horses, cows, sheep, &c.

or lamb, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding fourteen and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Killing with  
intent to steal  
carcase.

11. Whosoever shall wilfully kill any animal with intent to steal the carcase, skin, or any part of the animal so killed shall be guilty of felony, and punishable as if he had been convicted of feloniously stealing the same, provided such offence would have amounted to a felony.

Stealing deer.

12. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill, or wound, or attempt to kill or wound any deer kept or being in the *uninclosed* part of any forest, chase, or purlieu, shall for every such offence, on conviction before a justice of the peace, forfeit and pay not exceeding 50*l.*; and whosoever having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or any former Act, shall afterwards commit any of the offences hereinbefore enumerated, shall be guilty of felony. *Punishment*: At the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.

13. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill, or wound, or attempt to kill or wound any deer, kept or being in the *inclosed* part of any forest, chase, or purlieu, or in any inclosed land where deer shall be usually kept, shall be guilty of felony. *Punishment*: At the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.

Suspected  
persons in  
possession of  
venison.

14. If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall be found in the possession of any person, or on the premises of any person within his knowledge, and such person being taken or summoned before a justice of the peace, shall not satisfy him that he came lawfully by such deer, &c., or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction, forfeit and pay not exceeding 20*l.*; and if any such person shall not, under the said provisions, be liable to conviction, then, for the discovery of the party who actually killed or stole such deer, the justice may summon before him every person through whose hands such deer, &c., shall appear to have passed; and if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction, be liable to the payment of such sum as hereinbefore last mentioned.

15. Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever for the purpose of taking or killing deer in any part of any forest, chase, or purlieu, whether inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, shall, on conviction before a justice of the peace, forfeit and pay not exceeding 20*l*.

Setting engines for deer, destroying fences, &c.

16. If any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person intrusted with the care of such deer, and any of his assistants, whether in his presence or not, may demand from every such offender any gun, firearms, snare or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this Act, he shall be guilty of felony. *Punishment*: At the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.

Deer keepers may seize guns, &c., of offenders, who, on demand, do not deliver up the same.

17. Whosoever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether inclosed or not, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully at any other time take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction before a justice of the peace, forfeit and pay not exceeding 5*l*; but nothing in this section shall affect any person taking or killing in the daytime any rabbits on any sea bank or river bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank.

Killing hares or rabbits in a warren.

18. Whosoever shall steal any dog shall, on conviction before two justices of the peace, either be committed to the common gaol or house of correction, to be imprisoned, or to be imprisoned and kept to hard labour not exceeding six months, or shall forfeit and pay over and above the value of the said dog, not exceeding 20*l*;

Stealing dogs.

and whosoever, having been convicted of any such offence, either against this or any former Act, shall afterwards steal any dog, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court, imprisonment not exceeding eighteen months, with or without hard labour.

Possession of  
stolen dogs.

19. Whosoever shall unlawfully and knowingly have in his possession or on his premises any stolen dog, or the skin of any stolen dog, shall, on conviction before two justices of the peace, be liable to pay not exceeding 20*l.*; and whosoever, having been convicted of any such offence, either against this or any former Act, shall afterwards be guilty of any such offence as in this section before mentioned, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court, imprisonment not exceeding eighteen months, with or without hard labour.

Taking money  
to restore dogs.

20. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court, to be imprisoned not exceeding eighteen months, with or without hard labour.

Stealing beasts  
or birds ordi-  
narily kept in  
confinement,  
and not the sub-  
jects of larceny.

21. Whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof, shall, on conviction before a justice of the peace, at his discretion, either be committed to the common gaol or house of correction, to be imprisoned, or to be imprisoned and kept to hard labour not exceeding six months, or else shall forfeit and pay over and above the value of the bird, &c., not exceeding 20*l.*; and whosoever, having been convicted of any such offence, either against this or any former Act, shall afterwards commit any offence in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction to be kept to hard labour not exceeding twelve months.

Possession of  
stolen birds, &c.

22. If any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof; and any person in whose possession or on whose premises such bird, &c., shall be so found (such person knowing that such bird, &c., has been stolen) shall on conviction before a justice of the peace be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment as any person convicted of stealing any bird, &c., is made liable to by sect. 21.

23. Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law, shall, on conviction before a justice of the peace, forfeit and pay over and above the value of the bird, not exceeding 2*l*. Killing pigeons.

24. Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction before a justice of the peace, forfeit and pay over and above the value of the fish taken or destroyed (if any) not exceeding 5*l*. : provided that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, but any such last-mentioned person unlawfully and wilfully taking or destroying, or attempting to take or destroy any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay not exceeding 5*l*. ; and if in any such water as last mentioned, not exceeding 2*l*. Taking fish.

25. The tackle of persons fishing against the provisions of this Act may be seized by the owner of the ground, water, or fishery, or his servant or agent, after demand made for the same; but any person so angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom tackle shall be taken, or by him delivered up, shall be exempt from penalty. Seizure of fishing tackle.

26. Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony. *Punishment*: The same as in case of simple larceny. Whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, &c., being the property, &c., and sufficiently, &c., for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, &c., drag upon the ground or soil of any such fishery, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding three months, with or without hard labour, and with or without solitary confinement. *Proviso*: This section shall not prevent fishing for floating fish within such limits. Stealing or dredging for oysters in oyster fisheries.

*As to Larceny of Written Instruments.*

Bonds, bills,  
notes, &c.

27. Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, or obliterate the whole or any part of any valuable security other than a document of title to lands, shall be guilty of felony, of the same nature, and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which such security may relate, or with the money due on the securities so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned, or referred to in or by the security.

Title deeds.

28. Whosoever shall steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any document of title to lands, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Wills or codicils.

29. Whosoever shall, either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any will, codicil, or other testamentary instrument, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. *Proviso*: Nothing in this section or in sect. 28, nor any proceeding thereupon, shall affect any remedy at law or in equity which an aggrieved party would have had in respect of such offences if this Act had not passed; but no conviction of any such offender shall be received in evidence at law or in equity against him; and no person shall be convicted of any of the felonies in this section and sect. 28 mentioned, if he shall, at any time previous to his being charged, have first disclosed such act on oath, in consequence of any compulsory process or proceeding at law, or in equity, or bankruptcy, *bond fide* instituted by any party aggrieved.

Records or other  
legal documents.

30. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously cancel, obliterate, injure, or destroy the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or of any original document of any court of record, or relating to any matter civil or criminal, begun, depending, or terminated therein, or of any bill, petition, answer, interrogatory, deposition, affidavit, order, or decree, or of any original document of any

court of equity, or relating to any matter begun, &c., therein, or of any original document relating to the business of any employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in any of Her Majesty's castles, palaces, or houses, or in any Government or public office, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

*As to Larceny of Things attached to or growing on Land.*

31. Whosoever shall steal, or shall rip, cut, sever, or break with intent to steal, any glass or woodwork belonging to any building, or any metal, or any utensil or fixture, whether of metal or other material, or of both, fixed in or to any building, or anything made of metal, fixed in any land, being private property, or for a fence to any dwelling-house, garden, or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony, and punished as in case of simple larceny. Metal, glass, &c., fixed to house or land.

32. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, shall (in case the value of the articles stolen or injury done shall exceed 1*l.*) be guilty of felony, and punishable as in the case of simple larceny; and if any such offence shall be committed in any other place, and such value or injury shall exceed 5*l.*, the offender shall be guilty of felony, and punished as in the case of simple larceny. Trees in pleasure grounds.

33. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, where-soever growing, and the value whereof shall amount to 1*s.*, shall, on conviction before a justice of the peace, forfeit and pay, above such value or injury, not exceeding 5*l.* *Second offence*: Committal to the common goal or house of correction, to be kept to hard labour not exceeding twelve months. *Third offence*: Felony, and punishable as in case of simple larceny. Trees or shrubs where-soever growing.

34. Whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail, set up or used as a fence, or any stile or gate, or any part thereof, shall, on conviction before a justice of the peace, forfeit and pay, above the value of the article stolen, or amount of injury done, not exceeding 5*l.*, and for a second offence shall be committed to the common goal or Fences, &c.



house of correction, to be kept to hard labour not exceeding twelve months.

Possession of  
wood, &c.

35. If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire rail, stile, or gate, or any part thereof, to the value of 1s., shall be found in the possession of any person, or on his premises with his knowledge, and he shall not satisfy a justice of the peace that he came lawfully by the same, he shall, on conviction by the justice, forfeit and pay, above the value, not exceeding 2l.

Stealing fruit or  
vegetable  
productions in a  
garden, &c.

36. Whosoever shall steal, or shall destroy or damage, with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction before a justice of the peace, either be committed to the common gaol or house of correction, to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding six months, or else shall forfeit and pay, above the value of the articles stolen or injury done, not exceeding 20l., and for a second offence shall be guilty of felony, and punishable as in case of simple larceny.

Vegetable pro-  
ductions not  
growing in gar-  
dens, &c.

37. Whosoever shall steal, or shall destroy or damage, with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, distilling, or dyeing, or in the course of any manufacture and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground, shall, on conviction before a justice of the peace, either be committed to the common gaol or house of correction, to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding one month, or else shall forfeit and pay, above the value of the articles stolen or injury done, not exceeding 20s., and in default shall be committed as afore-said not exceeding [fourteen days] unless payment be sooner made; and for a second offence shall be committed to the common gaol or house of correction to be kept to hard labour not exceeding six months.

#### *As to Larceny from Mines.*

Ore of metal,  
coal, &c.

38. Whosoever shall steal, or sever with intent to steal, the ore of any metal, or any lapis caliminaris, manganese, or munnick, or any wad, black cawke, or black lead, or any coal, or cannel coal, from any mine, bed, or vein thereof, shall be guilty of felony. *Punishment*: At discretion of the court, imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement.

Removal of ore  
by miners.

39. Whosoever, being employed in or about any mine, shall take, remove, or conceal any ore of any metal or other mineral



found or being in such mine, with intent to defraud any proprietor of, or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony. *Punishment*: At discretion of the court, imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement.

*As to Larceny from the Person and other like Offences.*

40. Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. Robbery or stealing from the person.

41. On a trial for robbery the jury may convict of an assault with intent to rob.

42. Whosoever shall assault any person with intent to rob shall be guilty of felony. *Punishment*: (Unless a greater punishment is provided by this Act) At discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement. Assault with intent to rob

43. Whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob, any person, or shall, together with one or more other person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement. Robbery with arms, or by two or more, or robbery and wounding.

44. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping. Letter demanding money, &c., with menaces.

45. Whosoever shall, with menaces or by force, demand any property, chattel, money, valuable security, or other valuable thing of any person with intent to steal the same, shall be guilty Demanding money, &c., with menaces, &c.

of felony. *Punishment*: At discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Letter threatening to accuse of crime.

46. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt to commit any rape, or of any infamous crime with intent to extort or gain any property, chattel, money, valuable security, or other valuable thing from any person, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping. (Here follows a definition of "infamous crime.")

Accusing or threatening to accuse with intent to extort.

47. Whosoever shall accuse, or threaten to accuse either the person to whom such accusation or threat shall be made, or any other person of any crime mentioned in sect. 46, with intent to extort or gain from such person so accused or threatened to be accused, or from any other person any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and if a male under sixteen, with or without whipping.

Inducing a person by violence or threats to execute deeds, &c.

48. Whosoever, with intent to defraud or injure any other person, shall by any unlawful violence to or restraint of or threat of violence to, or restraint of the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime, compel or induce any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society upon or to any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as a valuable security, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Immaterial from whom menaces proceed.

49. It shall be immaterial whether such menaces or threats be of violence, injury, or accusation, to be caused or made by the offender, or by any other person.

*As to Sacrilege, Burglary, and Housebreaking.*

50. Whosoever shall break and enter any church, chapel, meeting-house, or other place of Divine worship, and commit any felony therein, or being in any such place, shall commit any felony therein, and break out of the same, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Breaking and entering a church, &c., and committing felony.

51. Whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or being in such place shall commit any felony therein, and shall in either case break out of the same in the night, shall be deemed guilty of burglary.

Burglary by breaking out.

52. Whosoever shall be convicted of burglary, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or not less than [five] years, or to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement.

Burglary.

53. No building, although within the same curtilage with any dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for any of the purposes of this Act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from one to the other.

What to be deemed part of dwelling-house.

54. Whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding seven years and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Entering house in the night with intent.

55. Whosoever shall break and enter any building and commit any felony therein, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof according to the provision hereinbefore mentioned, or being in any such building shall commit any felony therein and break out of the same, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years and not less than [five] years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement.

Breaking into building and committing felony.

56. Whosoever shall break and enter any dwelling-house, school-house, shop, warehouse, or counting-house, and commit any felony therein, or being in any such place shall commit any felony therein and break out of the same, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not

Breaking into shop, warehouse, &c., and committing felony.

exceeding fourteen years and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Housebreaking,  
&c., with intent  
to commit  
felony.

57. Whosoever shall break and enter any dwelling-house, church, chapel, meeting-house, or other place of Divine worship, or any building within the curtilage, school-house, shop, warehouse, or counting-house, with intent to commit any felony therein, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding seven years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Being armed  
with intent to  
break and enter  
any house in the  
night.

58. Whosoever shall be found by night, armed with any dangerous or offensive weapon or instrument, and with intent to break or enter any dwelling-house, or other building, and to commit any felony therein, or shall be found by night having in his possession, without lawful excuse (the proof of which excuse shall lie on such person), any implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building with intent to commit any felony therein, shall be guilty of a misdemeanour. *Punishment*: At discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years with or without hard labour.

Being armed  
with intent to  
break and enter  
any house in the  
night after pre-  
vious conviction.

59. Whosoever shall be convicted of any such misdemeanour, as in sect. 58 mentioned, committed after a previous conviction either for felony or such misdemeanour, shall be liable at discretion of the court to penal servitude not exceeding ten years, and not less than [five] years, or imprisonment not exceeding two years with or without hard labour.

#### *As to Larceny in the House.*

Stealing in  
dwelling-house.

60. Whosoever shall steal in any dwelling-house any chattel, money, or valuable security to the value in the whole of 5*l.* shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing in  
dwelling-house  
with menaces.

61. Whosoever shall steal any chattel, money, or valuable security in any dwelling-house, and shall by any menace or threat put anyone being therein in bodily fear, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

*As to Larceny in Manufactories.*

62. Whosoever shall steal, to the value of 10s., any woollen, linen, hempen, or cotton yarn, or any goods or articles of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of these materials mixed with each other or with any other material, whilst laid, placed, or exposed during any stage, process, or progress of manufacture in any building, field, or other place, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing goods  
in process of  
manufacture.

*As to Larceny in Ships, Wharves, &c.*

63. Whosoever shall steal any goods or merchandise in any vessel, barge, or boat of any description whatsoever in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or shall steal any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Stealing from  
ships, docks,  
wharves, &c.

64. Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement; and the offender may be indicted and tried either in the county or place in which the offence shall have been committed, or in any county or place next adjoining.

Stealing from  
ship in distress  
or wrecked.

65. If any goods, merchandise, or articles of any kind belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, shall be found in the possession of any person or on the premises of any person with his knowledge, and he, being summoned before a justice of the peace, shall not satisfy him that he came lawfully by the same, then the same shall by order of the justice be forthwith delivered to the owner. *Punishment*: At discretion of the justice, committal to the common gaol or house of correction to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding six months, or else shall forfeit and pay, above the value of the goods, &c., not exceeding 20l.

Possession of  
shipwrecked  
goods.

Offer for sale of  
shipwrecked  
goods.

66. If any person shall offer or expose for sale any goods, merchandise, or articles whatsoever which shall have been unlawfully taken, or shall be reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to a justice of the peace; and if the person who shall have offered or exposed the same for sale, being summoned by such justice, shall not appear and satisfy him that he came lawfully by such goods, merchandise, or articles, the same shall, by order of the justice, be returned to the owner upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same. *Punishment*: The same as in sect. 65.

*As to Larceny or Embezzlement by Clerks, Servants, or Persons in the Public Service.*

Larceny by  
clerks or ser-  
vants.

67. Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony. *Punishment*: At discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen with or without whipping.

Embezzlement  
by clerks or  
servants.

68. Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, &c., was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed. *Punishment*: The same as in sect. 67.

69 and 70. As to larceny and embezzlement by persons in the public service of the Queen or by the police.

71. Any number of distinct acts of embezzlement not exceeding three committed within six months from the first to the last may be charged in the same indictment.

72. Persons indicted for embezzlement shall not be acquitted if the offence shall prove to be larceny, and *vice versa*.

73. As to embezzlement by officers of the Bank of England.

*As to Larceny by Tenants or Lodgers.*

74. Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, shall be guilty of felony. *Punishment*: At discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement; and if a male under sixteen with or without whipping; and in case the value of such chattels or fixtures shall exceed 5*l.*, at discretion of the court, penal servitude not exceeding seven years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour and with or without solitary confinement; and if a male under sixteen with or without whipping.

Stealing chattel or fixture let to hire with house or lodgings.

*As to Frauds by Agents, Bankers, or Factors.*

75. Whosoever, having been intrusted either solely or jointly with any other person as a banker, merchant, broker, attorney, or other agent, with any money, or security for the payment of money, with any direction in writing, to apply, pay, or deliver such money or security, or any part thereof, or the proceeds, or any part of the proceeds of such security for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof; and whosoever having been intrusted either solely or jointly with any other person as banker, &c., with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, or in any stock or fund of any body corporate, company, or society, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him to sell, &c., or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanour. *Punishment*: At discretion of the court, penal servitude not exceeding seven years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Agent, banker, &c., embezzling money or selling securities, &c., intrusted to him.



Nothing in this section relating to agents shall affect any trustee or mortgagee in respect of any act done in relation to the property comprised in or affected by such trust or mortgage; nor shall restrain any banker, &c., from receiving any money which shall become due upon, or by virtue of any valuable security, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim, or demand, entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, &c.

Bankers, &c.,  
fraudulently  
selling, &c., pro-  
perty intrusted  
to their care.

76. Whosoever being a banker, merchant, broker, attorney, or agent, and being intrusted, either solely or jointly, with any other person, with the property of any other person, for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanour, and punishable as in sect. 75.

Persons under  
power of  
attorney fraudu-  
lently selling, &c.

77. Whosoever being intrusted, either solely, or jointly with any other person, with any power of attorney, for the sale or transfer of any property, shall fraudulently sell, or transfer, or otherwise convert the same, or any part thereof, to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanour, and punishable as in sect. 75.

Factors obtain-  
ing advances on  
the property of  
their principals.

78. Whosoever being a factor or agent intrusted, either solely or jointly with any other person, for the purpose of sale or otherwise with the possession of any goods, or of any document of title to goods, shall, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and, in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as aforesaid, by way of a pledge, lien, or security, for any money or valuable security borrowed or received by such factor or agent at or before the time of making such consignment, &c., or intended to be thereafter borrowed or received, or shall, contrary to or without such authority, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, accept any advance of any money or valuable security on the faith of any contract or agreement to consign, &c., any such goods or document of title, shall be guilty of a misdemeanour, and punishable as in sect. 75.

Every clerk and other person who shall knowingly and wilfully

act and assist in making any such consignment, &c., or in accepting or procuring such advance as aforesaid, shall be guilty of a misdemeanour, and punishable as in sect. 75. *Proviso*: No such factor or agent shall be liable to any prosecution for consigning, &c., any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of consignment, &c., was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent.

79. Definitions of the terms "intrusted," "pledge," "possessed," "advance," "contract or agreement."

80. Whosoever being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purposes as aforesaid, or otherwise dispose of or destroy such property, or any part thereof, shall be guilty of a misdemeanour and punishable as in sect. 75. *Proviso*: No prosecution under this section shall be commenced without the sanction of the Attorney-General, or, in case that office be vacant, of the Solicitor-General. *Proviso*: Where any civil proceeding shall have been taken against any persons to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending.

Trustees fraudulently disposing of property.

81. Whosoever, being a director, member, or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanour, and punishable as in sect. 75.

Officers, &c., of corporations and companies.

82. Whosoever, being a director, public officer, or manager of any body corporate or public company, shall as such receive or possess himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanour, and punishable as in sect. 75.

83. Whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of account or other document, shall be guilty of a misdemeanour and punishable as in sect. 75.

84. Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive and defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour, and punishable as in sect. 75.

No person to be exempt from answering questions in any court, &c.

85. Nothing in any of the last ten preceding sections shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy, and no person shall be liable to be convicted of any of the misdemeanours in any of the said sections mentioned by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being charged with such an offence have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding, which shall have been *bond fide* instituted by any party aggrieved, or, if he shall have first disclosed the same in any compulsory examination or deposition before any court, upon the hearing of any matter in bankruptcy.

No remedy at law or in equity shall be affected.

86. Nothing in any of the last eleven preceding sections, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him: and nothing in the said sections shall affect or prejudice any agreement entered into or security given by any trustee, having for

its object the restoration or repayment of any trust property misappropriated.

87. No misdemeanour against any of the last twelve preceding Jurisdiction. sections shall be tried at any court of general or quarter sessions of the peace.

*As to obtaining Money, &c., by False Pretences.*

88. Whosoever shall, by any false pretence, obtain from any False pretences. other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanour. *Punishment*: At discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. *Proviso*: If upon the trial it shall be proved that the property was obtained in any such manner as to amount in law to larceny, the offender shall not by reason thereof be entitled to be acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for larceny upon the same facts. *Proviso*: It shall be sufficient in any indictment for obtaining, or attempting to obtain any such property by false pretences, to allege that the party accused did the act with intent to defraud, without alleging an attempt to defraud any particular person, and without alleging any ownership of the chattel, &c.; and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.

89. Whosoever shall by any false pretence cause or procure any money to be paid, or any chattel or valuable security to be delivered to any other person for the use or benefit or on account of the person making such false pretence, or of any other person, with intent to defraud, shall be deemed to have obtained such money, &c., within the meaning of sect. 88.

90. Whosoever, with intent to defraud or injure any other person, shall, by any false pretence, fraudulently cause or induce any other person to execute, make, accept, indorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanour. *Punishment*: At discretion of the court, penal servitude not exceeding [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Inducing persons by fraud to execute deeds and other instruments.

*As to receiving Stolen Goods.*

Receiving where  
principal guilty  
of felony.

91. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony; and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice. *Punishment:* At the discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Indictment.

92. In any indictment containing a charge of feloniously stealing any property, it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen, and *vice versa*; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election; but the jury may find a verdict of guilty either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen; and if such indictment shall have been preferred and found against two or more persons, the jury may find all or any of the said persons guilty either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen, or may find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same, or any part or parts thereof, knowing the same to have been stolen.

93. Separate receivers may be included in the same indictment.

94. On an indictment for *jointly* receiving, the jury may convict of *separately* receiving.

Receiving where  
principal guilty  
of a misde-  
meanour.

95. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanour by this Act, knowing the same to have been unlawfully stolen, &c., shall be guilty of a misdemeanour, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanour shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice. *Punishment:* At the discretion of the court, penal servitude not exceeding seven years and not less than [five] years, or imprison-

ment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

96. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted, or disposed of, may, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanour only, be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanour may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county or place where he actually received such property.

Receiver, where triable.

97. Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable.

Receivers, where original offence punishable on summary conviction.

98. In case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except a receiver of stolen property) shall, on conviction, be liable at discretion of the court, to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Principals in the second degree and accessories.

99. This section relates to *abettors* in offences punishable on summary conviction, and is very similar to sect. 97.

Abettors.

#### *As to Restitution and Recovery of Stolen Property.*

100. If any person guilty of any such felony or misdemeanour as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence by or on behalf of the owner of the property, or his executor or

Restoration of stolen property after conviction.

administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative ; and in every case in this section aforesaid, the court before whom any person shall be tried for any such felony or misdemeanour shall have power to award, from time to time, writs of restitution for the said property, or to order such restitution in a summary manner ; provided that if it shall appear before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, &c. ; in such case the court shall not award or order the restitution of such security ; provided also that nothing in this section shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanour against this Act.

Reward for helping to restore stolen property.

101. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property, which shall by any felony or misdemeanour have been stolen, &c., as before mentioned, shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony. *Punishment*: At the discretion of the court, penal servitude, not exceeding seven years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under eighteen, with or without whipping.

Advertising reward for return of stolen property.

102. Whosoever shall publicly advertise a reward for the return of any property which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any such property without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of 50*l.* for every such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.



*As to Apprehension of Offenders, and other Proceedings.*

103. Any person found committing any offence under this Act (except angling in the daytime) may be apprehended without a warrant. A justice of the peace may, on proof on oath of reasonable cause for suspicion, grant a search warrant. Any person to whom property suspected of having been stolen is offered, may seize the party offering the same, and take him before a justice.

Apprehensions  
without  
warrant.

104. A peace officer may, without warrant, apprehend any person loitering at night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony under this Act.

105. As to the mode of compelling the appearance of persons punishable on summary conviction.

106. As to the application of forfeitures and penalties on summary convictions.

107. Power to a justice of the peace to commit in certain cases in default of payment of penalty.

108. Power to a justice of the peace to discharge the offender in case of a first conviction, on his making satisfaction to the party aggrieved.

109. A summary conviction shall be a bar to any other proceeding for the same cause.

110. As to appeal from summary conviction.

113. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the act was committed, and shall be commenced within six months after the act committed; and notice in writing of such action shall be given to the defendant one month at least before the commencement of the action. In any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at the trial. No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant. If the plaintiff shall be unsuccessful, the defendant shall recover costs as between [solicitor] and client. The plaintiff, if successful, shall not have costs unless the judge shall certify his approbation of the action.

Venue.

114. If any person shall have in his possession in any one part of the United Kingdom, any chattel, money, valuable security, or other property whatsoever, which he shall have feloniously taken in any other part of the United Kingdom, he may be tried in that part in which he has the property.

117. The court may in addition to or in lieu of any of the

Recognizances.

punishments by this Act authorised, in case of a misdemeanour fine the offender and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour. In case of felony, the court may require the offender to enter into, &c., &c. (as above) in addition to any punishment by this Act authorised. *Proviso* : No person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

### *Malicious Injuries to Property Act.*

24 & 25 VICT. c. 97.

#### *Injuries by Fire to Buildings and Goods therein.*

Setting fire to church, &c.

1. Whosoever shall unlawfully and maliciously set fire to any church, chapel, meeting house, or other place of Divine worship, shall be guilty of felony. *Punishment* : At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Setting fire to inhabited dwelling-house.

2. Whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony. *Punishment* : The same as in sect. 1.

Setting fire to house, stable, &c.

3. Whosoever shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hop oast, barn, storehouse, granary, hovel, shed, or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, whether the same shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony. *Punishment* : The same as in sect. 1.

Setting fire to station, engine-house, &c.

4. Whosoever shall unlawfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation, shall be guilty of felony. *Punishment* : The same as in sect. 1, with the exception of solitary confinement.

Setting fire to building not before mentioned.

5. Whosoever shall unlawfully and maliciously set fire to any building other than such as before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, shall be guilty of felony.

*Punishment* : The same as in sect. 1, with the exception of solitary confinement.

6. Whosoever shall unlawfully and maliciously set fire to any building other than such as before mentioned, shall be guilty of felony. *Punishment* : At the discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and, if a male under sixteen, with or without whipping.

7. Whosoever shall unlawfully and maliciously set fire to any matter or thing being in, against, or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony, shall be guilty of felony. *Punishment* : The same as in sect. 6.

Setting fire to goods in building.

8. Whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to any building or any matter or thing in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony, shall be guilty of felony. *Punishment* : At the discretion of the court, penal servitude not exceeding fourteen and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Attempting to set fire to buildings, &c.

#### *Injuries by Explosive Substances to Buildings and Goods therein.*

9. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or part of any dwelling house, any person being therein, or of any building whereby the life of any person shall be endangered, shall be guilty of felony. *Punishment* : The same as in sect. 1.

Damaging inhabited house with gunpowder, &c.

10. Whosoever shall unlawfully and maliciously place, or throw in, into, upon, under, against, or near any building, any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods, or chattels, shall, whether or not any explosion takes place, and whether or not any damage be caused, be guilty of felony. *Punishment* : The same as in sect. 8.

Attempting to destroy buildings with gunpowder.

#### *Injuries to Buildings by Rioters, &c.*

11. If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, or pull down or destroy, or begin to demolish, pull down, or destroy, any church, chapel, meeting house, or other place of Divine worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house,

Rioters demolishing church, building, &c.

hop oast, barn, granary, shed, hovel, or fold, or any building or erection used in farming land, or in carrying on any trade, or manufacture, or any branch thereof, or any building other than such as are in this section before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or belonging to any university, or college, or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or movable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine, or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, every such offender shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Rioters injuring  
building, &c.

12. If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force *injure or damage* any such church, &c., as in the last preceding section mentioned, every such offender shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, penal servitude not exceeding seven years and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour. *Proviso*: If upon a trial for any felony in sect. 11 mentioned the jury shall not be satisfied that the prisoner is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, they may find him guilty thereof, and he may be punished accordingly.

#### *Injuries to Buildings by Tenants.*

Injuries to  
houses, &c., by  
tenants.

13. Whosoever, being possessed of any dwelling-house or other building or part of any dwelling-house or other building held for any term of years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building, or part of such dwelling-house or building, shall be guilty of a misdemeanour.

#### *Injuries to Manufactures, Machinery, &c.*

Destroying  
goods in process  
of manufacture,  
or certain  
machinery.

14. Whosoever shall unlawfully and maliciously, cut, break, or destroy, or damage with intent to destroy or to render useless any goods or article of silk, woollen, linen, cotton, hair, mohair, or

alpaca, or of any one or more of those materials mixed with any other material, or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless any warp or shute of silk, &c. (as above), or of any one or more of those materials mixed with each other, or with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or movable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony. *Punishment*: The same as in sect. 1.

15. Whosoever shall unlawfully and maliciously cut, break, or destroy or damage with intent to destroy, or to render useless, any machine or engine, whether fixed or movable, used or intended to be used for performing any agricultural operation or any machine or engine, or any tool or implement, whether fixed or movable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of these materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace), shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding seven years and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Destroying other machinery.

#### *Injuries to Corn, Trees, and Vegetable Productions.*

16. Whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorze, furze, or fern, wheresoever the same may be growing, shall be guilty of felony. *Punishment*: The same as in sect. 8.

Setting fire to crops of corn, &c.

17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorze, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Setting fire to stacks of corn, &c.

Attempting to  
set fire to crops  
or stacks.

18. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned under such circumstances, that if the same were thereby set fire to, the offender would be under either of such sections guilty of felony, shall be guilty of felony. *Punishment*: The same as in sect. 15.

Destroying hop-  
binds.

19. Whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops, shall be guilty of felony. *Punishment*: The same as in sect. 8.

Destroying or  
damaging trees,  
shrubs, &c.

20. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house (in case the amount of injury done shall exceed 1*l*.) shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

21. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood growing elsewhere than in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining to or belonging to any dwelling-house (in case the amount of injury shall exceed 5*l*.) shall be guilty of felony. *Punishment*: The same as in sect. 20.

22. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of 1*s*. at the least, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding three months, or else shall forfeit and pay over and above the amount of injury done, such sum not exceeding 5*l*. as to the justice shall seem meet; and for a second offence shall be committed to the common gaol or house of correction to be kept to hard labour not exceeding twelve months; and for a third offence shall be guilty of a misdemeanour, and on conviction shall be liable at the discretion of the court to be imprisoned not exceeding two years with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

23. Whosoever shall unlawfully and maliciously destroy or damage with intent to destroy any plant, root, fruit or vegetable production growing in any garden, orchard, nursery ground, hot-house, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding six months, or else shall forfeit and pay over and above the amount of the injury done, such sum not exceeding 20*l.* as to the justice shall seem meet; and for a second offence shall be guilty of felony and punished as in sect. 20. Destroying fruit or vegetable productions.

24. Whosoever shall unlawfully and maliciously destroy or damage with intent to destroy any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or inclosed, not being a garden, orchard, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or imprisoned and kept to hard labour not exceeding one month, or else shall forfeit and pay over and above the amount of injury done, such sum not exceeding 20*s.*, as to the justice shall seem meet; and in default of payment thereof with costs, if ordered, shall be committed as aforesaid for any term not exceeding [fourteen days] unless payment be sooner made; and for a second offence shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding six months, as the convicting justice shall think fit.

*Injuries to Fences.*

25. Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall on conviction thereof before a justice of the peace, for the first offence forfeit and pay, over and above the amount of the injury done, such sum not exceeding 5*l.* as to the justice shall seem meet; and for a second offence shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve months, as the convicting justice shall think it. Destroying fences, &c.

*Injuries to Mines.*

26. Whosoever shall unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral Setting fire to coal mine.



fuel, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Attempting to  
set fire to a mine.

27. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any mine under such circumstances that if the mine were thereby set fire to the offender would be guilty of felony, shall be guilty of felony. *Punishment*: The same as in sect. 8.

Conveying water  
into mine, ob-  
structing shaft,  
&c.

28. Whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall with the like intent unlawfully and maliciously pull down, fill up, or obstruct or damage with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft, of or belonging to any mine, shall be guilty of felony. *Punishment*: The same as in sect. 18. *Proviso*: This provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working.

Damaging  
engines, &c., for  
working mines.

29. Whosoever shall unlawfully and maliciously pull down, or, destroy, or damage with intent to destroy or render useless, any steam engine or other engine for sinking, draining, ventilating, or working, or for in anywise assisting in sinking, &c., any mine or any appliance or apparatus in connection with any such steam or other engine, or any staith, building, or erection used in the conducting the business of any mine, or any bridge, waggon-way, or trunk, for conveying minerals from any mine, whether such engine, staith, &c., be completed or not, or shall unlawfully and maliciously stop, obstruct, or hinder the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine, or to hinder, obstruct or delay the working thereof, or shall unlawfully and maliciously, wholly or partially, cut through, sever, break, or unfasten, or damage with intent to destroy or render useless any rope, chain, or tackle of whatsoever material made used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever in anywise belonging or appertaining to or connected with or employed in any mine, or the working or business thereof, shall be guilty of felony. *Punishment*: The same as in sect. 18.

*Injuries to Sea and River Banks, and to Works on Rivers,  
Canals, &c.*

Destroying sea  
bank or canal  
wall.

30. Whosoever shall unlawfully and maliciously break down, or cut down, or otherwise damage or destroy any sea bank or sea wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or

building shall be, or shall be in danger of being overflowed or damaged, or shall unlawfully and maliciously throw, break, or cut down, level, undermine, or otherwise destroy any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal, shall be guilty of felony. *Punishment*: The same as in sect. 1.

31. Whosoever shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank, dam, or wall of any river, canal, drain, aqueduct marsh, or reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or shall unlawfully and maliciously open or draw up any floodgate, or sluice, or do any other injury or mischief to any navigable river or canal, with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, shall be guilty of felony. *Punishment*: The same as in sect. 18.

Removing piles of sea bank, &c., or obstructing inland navigation.

#### *Injuries to Ponds.*

32. Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fishpond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, and shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be, or that may thereafter be put, therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any millpond, reservoir, or pool, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 18.

Breaking down dam or poisoning fish.

#### *Injuries to Bridges, Viaducts, and Toll Bars.*

33. Whosoever shall unlawfully and maliciously pull or throw down, or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct over or under which bridge, &c., any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, &c., or the highway, &c., or any part thereof dangerous or impassable, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Injuries to a public bridge.

34. Whosoever shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike-

Destroying turnpike-gate, toll-house, &c.

gate or toll-bar, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike-gate, or toll-bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act. of Parliament relating thereto, or any house, building, or weighing engine, erected for the better collection, ascertainment, or security of any such toll, shall be guilty of a misdemeanour.

*Injuries to Railway Carriages and Telegraphs.*

Placing wood,  
&c., on railway  
with intent, &c.

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway, any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace, any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide, or remove, any signal, or light, upon or near to any railway, or shall unlawfully and maliciously do, or cause to be done, any other matter or thing, with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure or destroy, any engine, tender, carriage, or truck using such railway, shall be guilty of felony. *Punishment*: The same as in sect. 1, with the exception of solitary confinement.

Obstructing  
engines or  
carriages on rail-  
way.

36. Whosoever by any unlawful act, or by any wilful omission or neglect, shall obstruct, or cause to be obstructed, any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding two years, with or without hard labour.

Injuries to tele-  
graphs.

37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of, or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent, or obstruct, in any manner whatsoever, the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 36. *Proviso*: If it shall appear to any justice on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may hear and determine the same summarily. *Punishment*: At the discretion of the justice, either committal to the common gaol or house of correction, to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding three months, or a fine not exceeding 10*l*.

Attempt to in-  
jure telegraphs.

38. Whosoever shall unlawfully and maliciously, by any overt

act, attempt to commit any of the offences in sect. 37 mentioned, shall, on conviction before a justice of the peace, be liable to the same punishment as in sect. 37 mentioned in cases of summary conviction.

*Injuries to Works of Art.*

39. Whosoever shall unlawfully and maliciously destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which museum, &c., is either at all times, or from time to time, open for the admission of the public, or of any considerable number of persons to view the same, either by the permission of the proprietor thereof, or by the payment of money before entering the same, or any picture, statue, monument, or other memorial of the dead, painted glass, or other ornament or work of art in any church, chapel, meeting-house, or other place of Divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or to any university, or college, or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden, or ground, or any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument, shall be guilty of a misdemeanour. *Punishment:* Imprisonment not exceeding six months, with or without hard labour, and if a male under sixteen, with or without whipping. *Proviso:* Nothing herein contained shall be deemed to affect the right of any person to recover by action at law, damages for the injury so committed.

Destroying or  
damaging  
works of art.

*Injuries to Cattle and other Animals.*

40. Whosoever shall unlawfully and maliciously kill, maim, or wound any cattle shall be guilty of felony. *Punishment:* The same as in sect. 8, with the exception of whipping.

Killing or  
wounding cattle.

41. Whosoever shall unlawfully and maliciously kill, maim, or wound any dog, bird, beast, or other animal not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall, on conviction before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding six months, or else shall forfeit and pay not exceeding 20*l.* over and above the amount of injury done; and for a second offence shall be committed to the common gaol or house of correction, there to be kept to hard labour not exceeding twelve months.

Killing or  
wounding other  
animals.

Destroying  
ships.

42. Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony. *Punishment*: The same as in sect. 1.

43. Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Attempting to  
destroy ships.

44. Whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel under such circumstances that if the ship or vessel were thereby set fire to, &c., the offender would be guilty of felony, shall be guilty of felony. *Punishment*: The same as in sect. 8.

45. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel, any gunpowder or other explosive substance with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury be effected be guilty of felony. *Punishment*: The same as in sect. 8.

46. Whosoever shall unlawfully and maliciously damage otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless, shall be guilty of felony. *Punishment*: The same as in sect. 18.

Exhibiting false  
signals, &c.

47. Whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully exhibit any false light or signal with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is hereinbefore provided, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Removing or  
concealing sea  
marks.

48. Whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall unlawfully and maliciously do any act with intent to cut away, &c., or shall in any other manner unlawfully and maliciously injure or conceal any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation, shall be guilty of felony. *Punishment*: The same as in sect. 18.

Destroying  
wrecks, &c.

49. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles

of any kind belonging to such ship or vessel, shall be guilty of felony. *Punishment*: The same as in sect. 8, with the exception of whipping.

*Sending Letters Threatening to Burn or Destroy.*

50. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, or straw, or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding ten years, and not less than [five] years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping.

*Sending letters threatening to destroy, &c.*

*Injuries not before provided for.*

51. Whosoever shall unlawfully and maliciously commit any damage, injury, or spoil, to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding 5*l.*, shall be guilty of a misdemeanour, and on conviction shall be liable at the discretion of the court to be imprisoned not exceeding two years, with or without hard labour; and in case any such offence shall be committed between 9 p.m. and 6 a.m. shall be liable at the discretion of the court to be kept in penal servitude for five years, or to be imprisoned not exceeding two years with or without hard labour.

*Malicious injuries not before provided for exceeding the amount of 5*l.**

52. Whosoever shall wilfully and maliciously commit any damage, injury, or spoil, to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding two months, or else shall forfeit and pay a sum not exceeding 5*l.*, and a further sum for compensation for the injury, not exceeding 5*l.*; and in case of default may be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour not exceeding two months, or until payment of such sums and costs. *Proviso*: Nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any

*Cases not previously provided for.*

trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game ; but every such trespass shall be punishable as if this Act had not passed.

53. The provisions of sect. 52 shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided.

*Making Gunpowder to commit Offences and searching for the same.*

Making or having gunpowder with intent, &c.

54. Whosoever shall make or manufacture, or knowingly have in his possession any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing with intent thereby, or by means thereof, to commit, or for the purpose of enabling any other person to commit, any of the felonies in this Act mentioned, shall be guilty of a misdemeanour, and, on conviction, shall be liable, at the discretion of the court, to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

55. Power to justices of the peace to issue warrants for searching for such gunpowder, &c.

*Other Matters.*

Principals in the second degree and accessories.

56. In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is punishable ; and every accessory after the fact shall, on conviction, be liable, at the discretion of the court, to be imprisoned not exceeding two years, with or without hard labour, and with or without solitary confinement ; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act, shall be liable to be proceeded against and punished as a principal offender.

Suspected persons.

57. Similar section to sect. 104 of 24 & 25 Vict. c. 96 (p. 569).

Malice against owner of property not necessary.

58. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Persons in possession of property.

59. Every provision of this Act not hereinbefore so applied, shall apply to every person who, with intent to injure or defraud



any other person, shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

61. Any person found committing any offence against this Act may be apprehended without warrant. Miscellaneous provisions.

62. As to the mode of compelling the appearance of persons punishable on summary conviction.

63. Abettors in offences punishable on summary conviction to be punished as principals.

64. As to the application of forfeitures and penalties on summary conviction.

65. Power to a justice of the peace to commit in case of default in payment of forfeitures or penalties.

66. Power to a justice of the peace to discharge the offender in case of a first conviction on his making satisfaction to the party aggrieved.

67. A summary conviction shall be a bar to any other proceeding for the same cause.

68. As to appeal from summary conviction.

71. Similar section to sect. 113 of 24 & 25 Vict. c. 96 (p. 569).

73. Similar section to sect. 117 of 24 & 25 Vict. c. 96 (p. 569).

### *Forgery Act.*

24 & 25 Vict. c. 98.

#### *As to Forging Her Majesty's Seals.*

1. Whosoever shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the Great Seal of the United Kingdom, Her Majesty's privy seal, any privy signet of Her Majesty, Her Majesty's royal sign manual, any of Her Majesty's seals appointed by the twenty-fourth article of the union between England and Scotland to be kept, used, and continued in Scotland, the Great Seal of Ireland, or the privy seal of Ireland, or shall forge or counterfeit the stamp or impression of any of the seals aforesaid, or shall utter any document or instrument having thereon or affixed thereto the stamp or impression of any such forged or counterfeited seal, knowing the same so to be, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid knowing the same to be forged or counterfeited, or shall forge, or alter, or utter, knowing the same to be forged or altered, any document or instrument having any of the said stamps or impressions thereon or affixed thereto, shall be guilty of felony. *Punishment:* Forging the great seal, privy seal, &c.

At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

*As to Forging Transfers of Stock, &c.*

Forging transfer  
of certain stock,  
and power of  
attorney  
relating thereto.

2. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any transfer of any share, or interest of or in any stock, annuity, or any public fund which now is, or hereafter may be, transferable at the Bank of England or the Bank of Ireland, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter, or by, under, or by virtue of any Act of Parliament, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock, or to receive any dividend or money payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony. *Punishment:* The same as in sect. 1.

Personating  
owner of stock,  
&c.

3. Whosoever shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society, which now is or hereafter may be established by charter, or by, under, or by virtue of any Act of Parliament, or any owner of any dividend, or money payable in respect of any such share or interest as aforesaid, and shall thereby transfer, or endeavour to transfer, any share or interest belonging to any such owner, or thereby receive, or endeavour to receive, any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony. *Punishment:* The same as in sect. 1.

Forging attesta-  
tion to power of  
attorney for  
transfer of stock,  
&c.

4. Whosoever shall forge any name, handwriting, or signature purporting to be that of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is in either of the last two preceding sections mentioned, or to receive any dividend or money payable in respect of any such share or interest, or shall offer, utter, dispose of, or put off any such power of attorney or other authority, with any such

forged name, &c. thereon, knowing the same to be forged, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding seven, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

5. Whosoever shall wilfully make any false entry in or wilfully alter any word or figure in any of the books of account kept by the Governor and Company of the Bank of England or of the Bank of Ireland, in which books the accounts of the owners of any stock, annuities, or other public funds which now are or hereafter may be transferable at the Bank of England or the Bank of Ireland shall be entered and kept, or shall in any manner wilfully falsify any of the accounts of any such owners in any of the said books with intent in any of the cases aforesaid to defraud, or shall wilfully make any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable at the Bank of England or the Bank of Ireland, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Making false entries in the books of the public funds.

6. Whosoever, being a clerk, officer, or servant of, or other person employed or entrusted by the Governor and Company of the Bank of England or the Bank of Ireland, shall knowingly make out or deliver any dividend warrant, or warrant for payment of any annuity, interest, or money payable at the Bank of England or Ireland, for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to, with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 4.

False dividend warrants.

*As to Forging India Bonds.*

7. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bond commonly called an East India Bond, or any bond, debenture, or security issued or made under the authority of any Act passed or to be passed relating to the East Indies, or any indorsement on or assignment of any such bond, &c., with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 1.

East India Bonds.

*As to Forging Exchequer Bills, &c.*

8. Whosoever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any exchequer bill, bond, or debenture, or any indorsement on or assignment of any exchequer bill, &c., or any receipt or certifi-

Exchequer bills, &c.

cate for interest accruing thereon, with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 4.

Making plates,  
&c., in imitation  
of those used for  
exchequer bills,  
&c.

9. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused) shall make, or cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his custody or possession any frame, mould, or instrument, having therein any words, letters, figures, marks, lines, threads, or devices peculiar to and appearing in the substance of any paper provided or to be provided or used for exchequer bills, bonds, or debentures, or any machinery for working any threads into the substance of any paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads, or devices, or any plate peculiarly employed for printing such bills, &c., or any die or seal peculiarly used for preparing any such plate, or for sealing such bills, &c., or any plate, die, or seal intended to imitate any such plate, die, or seal as aforesaid, shall be guilty of felony. *Punishment*: The same as in sect. 4.

Making paper in  
imitation of that  
used for ex-  
chequer bills, &c.

10. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make, or cause or procure to be made, or aid or assist in making any paper in the substance of which shall appear any words, letters, figures, marks, lines, threads, or other devices peculiar to and appearing in the substance of any paper provided or to be provided or used for such bills, &c., or any part of such words, &c., and intended to imitate the same, or shall knowingly have in his custody or possession any paper whatsoever in the substance whereof shall appear any such words, &c., or any part of such words, &c., and intended to imitate the same, or shall cause or assist in causing any such words, &c., or any part of such words, &c., and intended to imitate the same, to appear in the substance of any paper whatever, or shall take or assist in taking any impression of any such plate, die, or seal, as in sect. 9 mentioned, shall be guilty of felony. *Punishment*: The same as in sect. 4.

Having in pos-  
session paper,  
plates, &c.

11. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive, or knowingly have in his custody or possession any paper manufactured and provided by or under the directions of the Commissioners of Inland Revenue or the Commissioners of Her Majesty's Treasury, for the purpose of being used as exchequer bills, bonds, or debentures, before such paper shall have been duly stamped, signed, and issued for public use, or any such plate, die, or seal as in sect. 9 mentioned, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding three years, with or without hard labour.

*As to Forging Bank Notes.*

12. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any note or bill of exchange of the Governor and Company of the Bank of England or the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange, or bank post bill, with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 1. Forging bank notes, &c.

13. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive from any other person, or have in his custody or possession any forged bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding fourteen and not less than [five] years, or imprisonment not exceeding two years with or without hard labour. Purchasing, receiving, &c., forged bank notes.

*As to making and engraving Plates, &c., for Bank Notes, &c.*

14. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use, or knowingly have in his custody or possession any frame, mould, or instrument for the making of paper with the words "Bank of England," or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount expressed in a word or words in Roman letters, visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used by the Governor and Company of the Banks of England and Ireland respectively for any notes, bills of exchange, or bank post bills of such banks respectively, or shall make, use, sell, expose to sale, utter, or dispose of, or knowingly have in his custody or possession any paper whatsoever with the words "Bank of England," or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount expressed in a word or words in Roman letters, appearing visible in the substance of the Making or having mould for making paper with the words "Bank of England," &c.

paper, or with any device, &c., as aforesaid, or shall by any art or contrivance cause the words "Bank of England," or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, or any such device, &c., as aforesaid to appear visible in the substance of any paper, or shall cause the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words in Roman letters to appear visible in the substance of the paper whereon the same shall be written or printed, shall be guilty of felony. *Punishment* : The same as in sect. 13.

Saving as to  
paper for bills of  
exchange, &c.

15. Nothing in sect. 14 shall prevent any person from issuing any bill of exchange or promissory note having the amount expressed or appearing visible in the substance of the paper, nor shall prevent any person from making, using or selling any paper having watermarks visible in the substance of the paper, not being bar lines, or laying wire lines, provided the same do not form the ground work or texture of the paper, or resemble the lines or watermarks of the paper used by the Governor and Company of the Bank of England and Ireland respectively.

Engraving or  
having any plate,  
&c., for making  
notes of Bank of  
England, or  
other bank, &c.

16. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of a promissory note, &c., purporting to be a bank note, bank bill of exchange or bank post bill, or to be a blank bank note, blank promissory note, blank bank bill of exchange, or blank bank post bill, or to be a part of a bank note, promissory note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England, or of the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or person carrying on business of bankers, or any name, word, or character, resembling, or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by the Governor, &c., or other body or person, &c., or shall use any such plate, wood, stone, or other material, or any other instrument or device for the making or printing any bank note, &c., or blank bank note, &c., or part of a bank note, &c., or knowingly have in his custody or possession any such plate, &c., or any such instrument or device, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession any paper upon which any blank bank note, blank bank bill of exchange, or blank bank post bill of the Governor, &c., or other body or person, &c., or part of a bank note, bank bill of exchange, or bank post bill, or any name, word, or character resembling, or apparently intended to

resemble, any such subscription, shall be made or printed, shall be guilty of felony. *Punishment* : At the discretion of the court, penal servitude not exceeding fourteen and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

17. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in any-wise make upon any plate whatsoever, or upon any wood, stone, or other material, any word, number, figure, device, character, or ornament, the impression taken from which shall resemble, or apparently be intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, or shall use or knowingly have in his custody or possession any such plate, wood, stone, or other material, or any other instrument or device for the impressing or making upon any paper or other material any word, &c., which shall resemble, or apparently be intended to resemble any part of a bank note, &c., of the Governor, &c., or other body or person, &c., or shall knowingly offer, utter, dispose, of, or put off, or have in his custody or possession any paper or other material upon which there shall be an impression of any such matter as aforesaid, shall be guilty of felony. *Punishment* : The same as in sect. 16.

Engraving on a plate, &c., any word, &c., resembling part of a bank note, &c.

18. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use any frame, mould, or instrument, for the manufacture of paper, with the name or firm of any body corporate, company, or person carrying on the business of bankers (other than and except the Banks of England and Ireland respectively), appearing visible in the substance of the paper, or knowingly have in his custody or possession any such frame, mould, or instrument, or make, use, sell, expose to sale, utter, or dispose of, or knowingly have in his custody or possession any paper in the substance of which the name or firm of any such body corporate, company or person shall appear visible, or by any art or contrivance cause the name or firm of any such body, &c., to appear visible in the substance of the paper upon which the same shall be written or printed, shall be guilty of felony. *Punishment* : The same as in sect. 16.

Making or having mould for making paper with name of any banker, or making or having such paper.

19. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in any-wise make upon any plate whatsoever, or upon any wood, stone, or other material, any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any bill of exchange, &c., in whatsoever language the same may be expressed, and whether the same shall or shall not be, or be intended to be,

Engraving plates for foreign bills or notes, &c.



under seal, purporting to be the bill, note, undertaking, or order, or part of the bill, &c., of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate, or body of the like nature, constituted or recognised by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty, or shall use or knowingly have in his custody or possession any plate, stone, wood, or other material upon which any such foreign bill, note, undertaking, or order, or any part thereof, shall be engraved or made, or shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession any paper, upon which any part of any such foreign bill, &c., shall be made or printed, shall be guilty of felony. *Punishment*: The same as in sect. 16.

*As to Forging Deeds, Wills, Bills of Exchange, &c.*

Forging deeds,  
bonds, &c.

20. Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, or any bond or writing obligatory, or any assignment at law or in equity of any such bond or writing obligatory, or shall forge any name, handwriting, or signature, purporting to be that of a witness attesting the execution of any deed, bond, or writing obligatory, or shall offer, utter, dispose of, or put off any deed, bond, or writing obligatory, having thereon any such forged name, handwriting, or signature, knowing the same to be forged, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Forging wills.

21. Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any will, testament, codicil, or testamentary instrument, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Forging bills of  
exchange or pro-  
missory notes.

22. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, indorsement, or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement or assignment of any such promissory note, with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Forging orders,  
receipts, &c., for  
money, goods,  
&c.

23. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, &c., or any accountable receipt, acquittance, or receipt for money or goods, or for any

note, bill, or other security for the payment of money, or any indorsement on or assignment of, any such accountable receipt, with intent in any such case to defraud, shall be guilty of felony.

*Punishment:* The same as in sect. 1.

24. Whosoever, with intent to defraud, shall draw, make, sign, accept, or indorse any bill of exchange or promissory note, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or shall offer, utter, dispose of, or put off, any such bill, &c., so drawn, &c., without lawful authority or excuse as aforesaid, knowing the same to have been so drawn, &c., shall be guilty of felony.

Accepting and making bills and notes per proc. without lawful authority.

*Punishment:* The same as in sect. 16.

25. Whenever any cheque or draft on any banker shall be crossed with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, whosoever shall obliterate, add to, or alter any such crossing, or shall offer, utter, dispose of, or put off any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made in any such case to defraud, shall be guilty of felony. *Punishment:* The same as in sect. 1.

Obliterating crossings on cheques.

26. Whosoever shall fraudulently forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any debenture issued under any lawful authority whatsoever, shall be guilty of felony. *Punishment:* The same as in sect. 16.

Forging debentures.

#### *As to Forging Records, Process, Instruments of Evidence, &c.*

27. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognizances, *cognovit actionem*, or warrant of attorney, or any original document of or belonging to any court of record, or any copy of any document used or intended to be used as evidence in any such court, shall be guilty of felony. *Punishment:* The same as in sect. 4,

Forging proceedings of courts of record.

28. Whosoever, being the clerk of any court, or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, shall utter any false copy or certificate of any record, knowing the same to be false; and whosoever, other than such clerk, officer, or deputy, shall sign or certify any copy or certificate of any record as such clerk, officer, or deputy; and whosoever shall forge and fraudulently

Forging copies or certificates of records, process of courts not of record, and using forged process.

alter or offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any copy or certificate of any record, or shall offer, utter, dispose of, or put off any such copy or certificate, having thereon any false or forged name, handwriting, or signature, knowing the same to be false or forged; and whosoever shall forge the seal of any court of record, or shall forge or fraudulently alter any process of any court not of record, or shall serve or enforce any forged process of any court whatsoever, knowing the same to be forged, or shall deliver or cause to be delivered to any person any paper falsely purporting to be any such process or a copy thereof, or to be any judgment, decree, or order of any court of law or equity, or a copy thereof, knowing the same to be false, or shall act or profess to act under any such false process, knowing the same to be false, shall be guilty of felony. *Punishment*: The same as in sect. 4.

Forging instruments made evidence by statute.

29. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any instrument, whether written or printed, or partly written and partly printed, which is or shall be made evidence by any Act, and for which offence no punishment is herein provided, shall be guilty of felony. *Punishment*: The same as in sect. 4.

#### *As to Forging Court Rolls.*

Forging court rolls.

30. Whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any court roll or copy of any court roll relating to any copyhold estate with intent to defraud, shall be guilty of felony. *Punishment*: The same as in sect. 1.

#### *As to Forging Registers of Deeds.*

Forgery as to the registry of deeds.

31. Whosoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any memorial, affidavit, affirmation, entry, certificate, indorsement, document or writing made or issued under the provisions of any Act relating to the registry of deeds, or shall forge or counterfeit the seal of or belonging to any office for the registry of deeds, or any stamp or impression of any such seal; or shall forge any name, handwriting, or signature, purporting to be that of any person to any such memorial, &c., which shall be required or directed to be signed by virtue of any Act, or shall offer, utter, dispose of, or put off any such memorial, &c., having thereon any such forged stamp or impression of any such seal, or any such forged name, handwriting, or signature, knowing the same to be forged, shall be guilty of felony. *Punishment*: The same as in sect. 16.

*As to Forging Orders, &c., of Justices of the Peace.*

32. Whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any summons, conviction, order, or warrant of any justice of the peace, or any recognisance purporting to have been entered into before any justice of the peace or other officer authorised to take the same, or any examination, deposition, affidavit, affirmation, or solemn declaration, taken or made before any justice of the peace, shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude for [five] years or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging orders  
of justices,  
recognisances,  
&c.

*As to Forging the Name of the [Paymaster-General], &c.*

33. Whosoever, with intent to defraud, shall forge or alter any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument, or writing made or purporting or appearing to be made by the [Paymaster-General] or any other officer of the Court of Chancery, or by any officer of any court, or by any cashier or other officer or clerk of the Governor and Company of the Bank of England, or the name, handwriting, or signature of any such person as aforesaid, or shall offer, utter, dispose of, or put off any such certificate, &c., knowing the same to be forged or altered, shall be guilty of felony. *Punishment:* The same as in sect. 16.

Forging name of  
Paymaster-  
General.

*As to falsely Acknowledging Recognisances, &c.*

34. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused) shall, in the name of any other person, acknowledge any recognisance or bail, or any *cognovit actionem*, or judgment, or any deed or other instrument, before any court, judge, or other person lawfully authorised in that behalf, shall be guilty of felony. *Punishment:* The same as in sect. 4.

Acknowledging  
recognisance,  
&c., in name of  
another.

*As to forging Marriage Licences.*

35. Whosoever shall forge or fraudulently alter any licence of or certificate for marriage, or shall offer, utter, dispose of, or put off any such licence or certificate, knowing the same to be forged or fraudulently altered, shall be guilty of felony. *Punishment:* The same as in sect. 4.

Forging, &c.,  
marriage  
licence, &c.

*As to forging Registers of Births, Marriages, and Deaths.*

36. Whosoever shall unlawfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any register of births, baptisms, marriages, deaths, or burials, by law authorised or required to be kept, or any part of any such register, or any certified copy of any such register or any part thereof, or

Forging regis-  
ters of births,  
baptisms, mar-  
riages, deaths,  
or burials.

shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death, or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or shall knowingly and unlawfully insert, or cause or permit to be inserted, in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, &c., or shall knowingly and unlawfully give any false certificate relating to any birth, &c., or shall certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any register office or burial board, or shall offer, utter, dispose of, or put off any such register, entry, certified copy, certificate, or seal, knowing the same to be false, forged, or altered, or shall offer, &c., any copy of any entry in any such register, knowing such entry to be false, forged, or altered, shall be guilty of felony. *Punishment*: The same as in sect. 1.

Making false  
entries in copies  
of register sent  
to registrar.

37. Whosoever shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register directed or required by law to be sent to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any copy of any register so directed or required to be sent, or shall knowingly and wilfully sign or verify any copy of any register so directed or required to be sent which shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface, or injure, or shall for any fraudulent purpose take from its place of deposit, or conceal any such copy of any register, shall be guilty of felony. *Punishment*: The same as in sect. 1.

*As to demanding Property upon forged Instruments.*

Demanding  
property upon  
forged instru-  
ments.

38. Whosoever, with intent to defraud, shall demand, receive, or obtain, or cause or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under, upon, or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, or under, upon, or by virtue of any probate or letters of administration, knowing the will or codicil on which the same shall have been obtained to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit, shall be guilty of felony. *Punishment*: The same as in sect. 16.

*As to other Matters.*

39. Where, by this or any other Act, any person is or shall be made liable to punishment for forging or altering, or for offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any instrument or writing designated in such Act by any special name or description, and such instrument or writing, however designated, shall be in law a will, testament, codicil, or testamentary writing, or a deed, bond, or writing obligatory, or a bill of exchange, or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange, or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, order, authority, or request for the payment of money, or an indorsement on or assignment of an undertaking, &c., within the meaning of this Act, in every such case the person forging or altering such instrument or writing, or offering, &c., such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this Act, and be punished accordingly.

Forging instrument, however designated, which is in law a will, bill of exchange, &c.

40. Where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed to be an offence, if any person shall in England forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter in whatsoever place out of England such writing or matter may purport to be made or may have been made, and in whatever language expressed, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby as if the writing or matter had purported to be made or had been made in England.

Forging, &c., in England documents purporting to be made out of England, &c.

Similar enactment as to bills of exchange, promissory notes, and indorsements and assignments thereof, acceptances of bills of exchange, undertakings, warrants, orders, authorities, or requests for the payment of money, or for the delivery or transfer of any goods or securities, deeds, bonds, or writings obligatory, either wholly or in part for the payment of money, and indorsements on or assignments of such undertakings, &c., and deeds, &c.

41. Forgers, accessories of forgers before the fact (in cases of felony), and aiders and abettors of forgers (in cases of misdemeanour), may be tried in the county where they are apprehended, as if the offence had been committed there.

Place of trial.

46. Power to justices of the peace, on reasonable cause shown, to issue warrants to search for forged instruments and paper and implements employed in forgery.

Search warrants.

Forgeries once  
capital offences.

48. All forgeries which were capital offences previously to the 1 Will. 4, c. 66, and are not otherwise punishable under this Act, shall be punishable as in sect. 1 of this Act mentioned.

49. Similar section to sect. 56 of 24 & 25 Vict. c. 97 (p. 582).

51. Similar section to sect. 117 of 24 & 25 Vict. c. 96 (p. 569).

### *Coinage Offences Act.*

24 & 25 Vict. c. 99.

Counterfeiting  
the gold or silver  
coin.

2. Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble, or pass for any of the Queen's current gold or silver coin, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Colouring, &c.,  
counterfeit coin,  
or genuine coin.

3. Whosoever shall gild or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever wash, case over, or colour any coin whatsoever resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever wash, case over, or colour any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild, or shall with any wash or materials capable of producing the colour or appearance of gold, or by any means whatsoever wash, case over, or colour any of the Queen's current silver coin, or file, or in any manner alter such coin with intent to make the same resemble or pass for any of the Queen's current gold coin; or shall gild, or silver, or shall with any wash or materials capable of producing the colour or appearance of gold or silver, or by any means whatsoever wash, case over, or colour any of the Queen's current copper coin, or file, or in any manner alter such coin with intent to make the same resemble or pass for any of the Queen's current gold or silver coin, shall be guilty of felony. *Punishment*: The same as in sect. 2.

Impairing the  
gold or silver  
coin with intent,  
&c.

4. Whosoever shall impair, diminish, or lighten any of the Queen's current gold or silver coin with intent that the coin so impaired, diminished, or lightened may pass for the Queen's



current gold or silver coin, shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude not exceeding fourteen, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

5. Whosoever shall unlawfully have in his custody or possession (a) any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which shall have been produced or obtained by impairing, diminishing, or lightening any of the Queen's current gold or silver coin, knowing the same to be so produced or obtained, shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude not exceeding seven, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Unlawful possession of coin filings or clippings.

6. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall buy, sell, receive, pay, or put off, or offer to buy, &c., any false or counterfeit coin resembling or apparently intended to resemble, or pass for any of the Queen's current gold or silver coin, at or for a lower rate or value than the same imports, or was apparently intended to import, shall be guilty of felony. *Punishment:* The same as in sect. 2.

Buying or selling, &c., counterfeit coin.

7. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall import or receive into the United Kingdom from beyond the seas any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall be guilty of felony. *Punishment:* The same as in sect. 2.

Importing counterfeit coin.

8. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall export or put on board any ship, vessel, or boat, for the purpose of being exported from the United Kingdom, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Exporting counterfeit coin.

9. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court,

Uttering counterfeit gold or silver coin.

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(a) As to the meaning of the expression "custody or possession," see sect. 1 of the statute: (2 Chitty's Statutes, 4th ed. 486.)

imprisonment not exceeding one year, with or without hard labour, and with or without solitary confinement.

Uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering.

10. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and shall at the time of such tendering, uttering, or putting off, have in his custody or possession, besides the false or counterfeit coin so tendered, uttered, or put off, any other piece of false or counterfeit coin resembling, or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall, either on the day of such tendering, &c., or within the space of ten days then next ensuing, tender, utter, or put off any such false or counterfeit coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 8.

Having three or more pieces, with intent, &c.

11. Whosoever shall have in his custody or possession three or more pieces of counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same, or any of them, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Second offences.

12. Whosoever, having been convicted of any such misdemeanour as in sections 9, 10, and 11 mentioned, or of any felony against this or any former Act relating to the coin, shall afterwards commit any of the misdemeanours in any of the said sections mentioned, shall be guilty of felony. *Punishment*: The same as in sect. 2.

Uttering foreign coin, &c., with intent, &c.

13. Whosoever shall, with intent to defraud, tender, utter, or put off, as or for any of the Queen's current gold or silver coin, any coin not being such current gold or silver coin, or any medal or piece of metal, or mixed metals, resembling in size, figure, and colour the current coin as or for which the same shall be so tendered, uttered, or put off, such coin, &c., so tendered, &c., being of less value than the current coin as or for which the same shall be so tendered, &c., shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 9.

Counterfeiting, &c., copper coin.

14. Whosoever shall falsely make or counterfeit any coin, resembling, or apparently intended to resemble or pass for, any of the Queen's current copper coin (a); and whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or

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(a) This includes bronze coins and coins of mixed metal (sect. 1).

possession any instrument, tool, or engine adapted and intended for the counterfeiting any of the Queen's current copper coin; or shall buy, sell, receive, pay, or put off, or offer to buy, &c., any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, at or for a lower rate or value than the same imports, or was apparently intended to import, shall be guilty of felony. *Punishment*: The same as in sect. 5.

15. Whosoever shall tender, utter, or put off, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 9. Uttering base copper coin.

16. Whosoever shall deface any of the Queen's current gold, silver, or copper coin, by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding one year, with or without hard labour. Defacing coin by stamping words.

17. No tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as in sect. 16 mentioned, shall be a legal tender; and whosoever shall tender, utter, or put off any coin so defaced, shall, on conviction before two justices, be liable to forfeit and pay any sum not exceeding 40s. *Proviso*: No person shall proceed for any such last-mentioned penalty without the consent of the Attorney-General. Tender of coin so defaced.

18. Whosoever shall make or counterfeit any kind of coin, not being the Queen's current gold or silver coin, but resembling, or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, shall be guilty of felony. *Punishment*: The same as in sect. 5. Counterfeiting foreign gold and silver coin.

19. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall bring or receive into the United Kingdom any such false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any gold or silver coin of any foreign prince, state, or country knowing the same to be false or counterfeit, shall be guilty of felony. *Punishment*: The same as in sect. 5. Bringing such counterfeit coin into the kingdom.

20. Whosoever shall tender, utter, or put off, any such false or counterfeit coin, resembling, or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit, shall be Penalty for uttering same

guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding six months, with or without hard labour.

Second and third offences.

21. Whosoever shall commit a second offence against sect. 20 shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 8. Whosoever shall commit a third offence against sect. 20, shall be guilty of felony. *Punishment*: The same as in sect. 2.

Counterfeiting other foreign coin.

22. Whosoever shall falsely make or counterfeit any kind of coin not being the Queen's current coin, but resembling, or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal, or mixed metals, of less value than the silver coin of any foreign prince, state, or country, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, for the first offence imprisonment not exceeding one year, and for the second offence the same as in sect. 5.

Penalty for possession of more than five pieces of counterfeit foreign coin.

23. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall have in his custody or possession any greater number than five pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state or country, or any such copper or other coin as in sect. 22 mentioned, shall, on conviction before a justice of the peace, forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice, and shall for every such offence forfeit and pay any sum not exceeding 40s. and not less than 10s., for every such piece of false and counterfeit coin which shall be found in the custody or possession of such person, one moiety to the informer, and the other moiety to the poor of the parish where such offence shall be committed; and in case of non-payment forthwith, the offender may be committed to the common gaol or house of correction, to be kept to hard labour for [one] month or until payment.

Making, mending, or possessing coining tools.

24. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or possession any puncheon, counter puncheon, matrix, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be adapted and intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin, or of any coin of any foreign prince, state, or country, or any part or parts of both or either of such sides; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession any edger, edging or other tool, collar, instrument, or engine, adapted and intended for the

marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin, knowing the same to be so adapted and intended as aforesaid; or shall make, or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession any press for coinage, or any cutting engine for cutting by force of a screw or otherwise round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, knowing such press to be a press for coinage, or knowing such engine or machine to have been used, or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid, shall be guilty of felony.

*Punishment:* The same as in sect. 2.

25. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly convey out of any of Her Majesty's mints any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press, or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal, or mixture of metals, shall be guilty of felony. *Punishment:* The same as in sect. 2.

Conveying tools or moneys out of mint without authority.

26. Where any coin shall be tendered as the Queen's current gold or silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, such person may cut, break, bend, or deface such coin, and if any coin so cut, &c., shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and shall appear to be lawful coin, the person cutting, &c., the same, is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise whether the coin so cut, &c., be diminished as aforesaid, or counterfeit, it shall be determined by a justice of the peace.

Suspected coin may be cut.

27. Provision in case of discovery of counterfeit coin and coining tools and for the seizure thereof, and for securing them as evidence. Power to justices of the peace, on reasonable cause shown, to issue warrants to search for such counterfeit coin or coining tools, &c., or filings, &c., or gold, &c., in dust or solution as aforesaid.

Discovery, seizure, &c., of counterfeit coin, &c.

28. Where any person shall tender, utter, or put off any false or counterfeit coin in one county or jurisdiction, and shall also tender, &c., any other false or counterfeit coin in any other county or jurisdiction, either on the same day or within ten days next ensuing, or where two or more persons acting in concert in different counties or jurisdictions shall commit any offence against

Venna.

this Act, every such offender may be tried, and the offence laid and charged to have been committed in any one of the said counties or jurisdictions.

Miscellaneous provisions.

29. For the purposes of this Act coin may be proved to be false or counterfeit by the evidence of any credible witness.

31. Any person may apprehend any person committing any indictable offence against this Act.

33. Similar section to sect. 113 of 24 & 25 Vict. c. 96 (p. 569).

35. In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any such felony shall be liable to be imprisoned not exceeding two years, with or without hard labour.

38. Similar section to sect. 117 of 24 & 25 Vict. c. 96 (p. 569).

### *Offences against the Person Act.*

24 & 25 Vict. c. 100.

#### *Homicide.*

Murder.

1. Whosoever shall be convicted of murder shall suffer death as a felon.

Conspiring or soliciting to commit murder.

2. All persons who shall conspire, confederate, and agree to murder any person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court penal servitude for not more than ten, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour.

Manslaughter

5. Whosoever shall be convicted of manslaughter shall be liable at the discretion of the court to be kept in penal servitude for life or not less than [five] years, or to be imprisoned not exceeding two years, with or without hard labour, or to pay such fine as the court shall award in addition to or without any such other discretionary punishment as aforesaid.

Indictment for murder or manslaughter.

6. In any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and

murder the deceased ; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased ; and it shall be sufficient in any indictment against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed.

7. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence or in any other manner without felony. Excusable homicide.

9. Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of Her Majesty or not, such offence, whether the same shall amount to the offence of murder or of manslaughter or of being accessory thereto, may be tried in any county or place in England or Ireland in which such person shall be apprehended or be in custody, as if the offence had been committed there. *Proviso* : Nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland. Murder or manslaughter abroad.

10. Where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or *vice versa*, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory to murder or manslaughter, may be tried in the county or place in England or Ireland in which such death, stroke, poisoning, or hurt shall happen. Place of trial.

#### *Attempts to Murder.*

11. Whosoever shall administer to, or cause to be administered to or to be taken by any person any poison or other destructive thing, or shall by any means whatsoever wound, or cause any bodily harm to any person with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony. *Punishment* : At the discretion of the court, penal servitude for life, or not less than [five] years, or imprisonment not exceeding two years with or without hard labour, and with or without solitary confinement. Administering poison or wounding with intent.

12. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building with intent to commit murder shall be guilty of felony. *Punishment* : The same as in sect. 11. Damaging building with intent to murder.

13. Whosoever shall set fire to any ship or vessel, or any part Setting fire, &c.,



to ship with like intent.

thereof, or any part of the tackle, apparel, or furniture thereof, or any chattels being therein, or shall cast away or destroy any ship or vessel with intent in any of such cases to commit murder, shall be guilty of felony. *Punishment*: The same as in sect. 11.

Other attempts to murder.

14. Whosoever shall attempt to administer to, or shall attempt to cause to be administered to, or to be taken by any person, any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony. *Punishment*: The same as in sect. 11.

15. Whosoever shall by any means other than those already specified attempt to commit murder, shall be guilty of felony. *Punishment*: The same as in sect. 11,

*Letters threatening to Murder.*

Letters threatening to murder.

16. Whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding ten and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping.

*Acts causing or tending to cause Danger to Life or Bodily Harm.*

Impeding a person shipwrecked.

17. Whosoever shall unlawfully and maliciously prevent or impede any person being on board of, or having quitted any ship or vessel which shall be in distress or wrecked, stranded or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid, shall be guilty of felony. *Punishment*: The same as in sect. 11.

Shooting, &c., with intent to do grievous bodily harm.

18. Whosoever shall unlawfully and maliciously, by any means whatsoever, wound or cause any grievous bodily harm to any person, or shoot at any person, or by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person with intent, in any of such cases, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony. *Punishment*: The same as in sect. 11.

What shall constitute loaded arms.

19. Any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and

ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause.

20. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, penal servitude for [five] years, or imprisonment not exceeding two years, with or without hard labour. Inflicting bodily injury.

21. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any other means calculated to choke, &c., attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony. *Punishment*: The same as in sect. 11, with the exception of solitary confinement.(a) Attempting to choke, &c., in order to commit indictable offence.

22. Whosoever shall unlawfully apply or administer to, or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing any indictable offence, shall be guilty of felony. *Punishment*: The same as in sect. 11, with the exception of solitary confinement. Using chloroform to commit indictable offence.

23. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony. *Punishment*: The same as in sect. 4. Maliciously administering poison, &c.

24. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 20.

25. If, upon the trial of any person for any felony in sect. 23 mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanour in sect. 24 mentioned, he may be found guilty of such misdemeanour and punished accordingly. Jury may convict of misdemeanour.

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(a) See 26 & 27 Vict. c. 44, *post*.

Not providing apprentices, &c., with necessary food, &c.

26. Whosoever, being legally liable, either as master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that his life shall be endangered, or his health shall have been, or shall be likely to be, permanently injured, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 20.

Exposing children whereby life endangered.

27. Whosoever shall unlawfully abandon or expose any child under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been, or shall be likely to be, permanently injured, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 20.

Causing bodily injury by gunpowder.

28. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for life or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Causing explosion, or throwing corrosive fluid with intent, &c.

29. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send, or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon, or otherwise apply to any person any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony. *Punishment*: The same as in sect. 28.

Placing gunpowder near a building with intent, &c.

30. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near, any building, ship, or vessel, any gunpowder or other explosive substance, with intent to do any bodily injury to any person, shall, whether or not any explosion take place, and whether or not any bodily injury be effected, be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding fourteen and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.

Setting spring-guns, &c., with intent to inflict grievous bodily harm.

31. Whosoever shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous

bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 20. Whosoever shall knowingly and wilfully permit any such spring-gun, man-trap, or other engine which may have been set or placed in any place, then being in or afterwards coming into his possession or occupation by some other person to continue so set or placed, shall be deemed to have set and placed the same with such intent as aforesaid. *Proviso*: Nothing in this section shall make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin. *Proviso*: Nothing in this section shall make it unlawful to set or place, or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring-gun, man-trap, or other engine in a dwelling house, for the protection thereof.

32. Whosoever shall unlawfully and maliciously put or throw upon or across any railway, any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert, any points, or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do, or cause to be done, any other matter or thing with intent in any of the cases aforesaid to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude for life or not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and, if a male under sixteen, with or without whipping.

Placing wood, &c., on railway, with intent to endanger passengers.

33. Whosoever shall unlawfully and maliciously throw, or cause to fall, or strike at, against, into, or upon any engine, tender, carriage, or truck, used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck, of any train, of which such first-mentioned engine, &c., shall form part, shall be guilty of felony. *Punishment*: The same as in sect. 11, with the exception of solitary confinement.

Casting stone, &c., on railway carriage.

34. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger, or cause to be endangered, the safety of any person conveyed, or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanour. *Punishment*: At the discretion of the court, imprisonment not exceeding two years, with or without hard labour.

Endangering passengers by railway.

**Furious driving.** 35. Whosoever, having the charge of any carriage or vehicle, shall, by wanton or furious driving, or racing, or other wilful misconduct, or by wilful neglect, do, or cause to be done, any bodily harm to any person, shall be guilty of a misdemeanour. *Punishment* : The same as in sect. 34.

#### *Assaults.*

**Obstructing or assaulting a clergyman, &c., in discharge of his duties.**

36. Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent, any clergyman, or other minister, in or from celebrating Divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of Divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place, or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in any of the rites or duties in this section aforesaid, or who, to the knowledge of the offender, shall be going to perform the same, or returning from the performance thereof, shall be guilty of a misdemeanour. *Punishment* : The same as in sect. 34.

**Assaulting magistrate, &c., for preserving wreck.**

37. Whosoever shall assault and strike, or wound any magistrate, officer, or other person whatsoever, lawfully authorised in, or on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects, wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanour. *Punishment* : At the discretion of the court, penal servitude not exceeding seven, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour.

**Assault with intent to commit felony, or on peace officers, &c.**

38. Whosoever shall assault any person, with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence, shall be guilty of a misdemeanour. *Punishment* : The same as in sect. 34.

**Assaults with intent to obstruct the sale of grain, or its free passage.**

39. Whosoever shall beat, or use any violence, or threat of violence, to any person, with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of any wheat, or other grain, flour, meal, malt, or potatoes, in any market or other place, or shall beat, or shall use any such violence or threat to any person having the care or charge of any wheat, &c., whilst on the way to or from any city, market town, or other place, with intent to stop the conveyance of the same, shall, on conviction before two justices of the peace, be liable to be imprisoned and kept to hard

labour in the common gaol or house of correction not exceeding three months. *Proviso*: No person who shall be punished under this section shall be punished for the same offence by virtue of any other law whatsoever.

40. Whosoever shall, unlawfully and with force, hinder or prevent any seaman, keelman, or caster from working at his lawful occupation, or shall beat or use any violence to any such person, with intent to hinder or prevent him from so working, shall, on conviction before two justices of the peace, be liable to the same punishment as mentioned in sect. 39. *Proviso*: Similar to that in sect. 39.

Assaults on  
seamen, &c.

42. Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon conviction, at the discretion of the justices, either be committed to the common gaol or house of correction, to be imprisoned, with or without hard labour, not exceeding two months, or else shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered) 5*l.*; and in case of default, the offender may be committed to the common gaol or house of correction, to be imprisoned, with or without hard labour, not exceeding two months, or until payment.

Common assault  
or battery.

43. When any person shall be charged before two justices of the peace with an assault or battery upon any male child whose age shall not, in the opinion of such justices, exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said justices, if the assault or battery is of such an aggravated nature that it cannot, in their opinion, be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and if proved, the offender may be imprisoned in the common gaol or house of correction, with or without hard labour, not exceeding six months, or be fined not exceeding (with costs) 20*l.*, and in default may be imprisoned in the common gaol or house of correction not exceeding six months, or until payment, and if the justices shall so think fit, in any of the said cases shall be bound to keep the peace and be of good behaviour not exceeding six months from the expiration of such sentence.

Aggravated  
assaults on  
males under  
fourteen, and on  
females.

44. If the justices shall dismiss any complaint under sect. 42 or sect. 43, they shall forthwith certify the fact of such dismissal and deliver such certificate to the defendant.

Certificate  
dismissal.

45. If any person against whom any such complaint as in sects. 42, 43, and 44 mentioned, shall have been preferred by or on behalf of the party aggrieved, shall have obtained such

Effect of certifi-  
cate or convic-  
tion.

certificate, or having been convicted shall have paid the amount adjudged to be paid, or shall have suffered the imprisonment or imprisonment with hard labour awarded, he shall be released from all further proceedings, civil or criminal, for the same cause.

These provisions  
not to apply to  
certain cases.

46. Provided that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is a fit subject for prosecution by indictment, they shall deal with the case as if they had no authority finally to hear and determine the same; provided also that nothing herein contained shall authorise any justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or any execution under process of any court of justice.

Assault occasioning  
bodily harm.

47. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm, shall be liable, at the discretion of the court, to be kept in penal servitude for [five] years, or to be imprisoned not exceeding two years, with or without hard labour; and whosoever shall be so convicted of a common assault shall be liable, at the discretion of the court, to be imprisoned not exceeding one year, with or without hard labour.

Common  
assault.

### *Rape, Abduction, and Defilement of Women.*

Rape.

48. Whosoever shall be convicted of the crime of rape shall be guilty of felony. *Punishment*: The same as in sect. 11, with the exception of solitary confinement.

Procuring defilement of girl  
under age.

49. Whosoever shall by false pretences, false representations, or any other fraudulent means, procure any woman or girl under the age of twenty-one years to have illicit carnal connection with any man, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 34.

Indecent assault,  
&c.

52. Whosoever shall be convicted of any indecent assault upon any female, or of any attempt to have carnal knowledge of any girl under twelve years of age, shall be liable, at the discretion of the court, to be punished as mentioned in sect. 34.

Abduction.

53. Where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be a presumptive heiress or co-heiress, or presumptive next of kin, or one of the presumptive next of kin to anyone having such interest, whosoever shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; and whosoever shall fraudulently



allure, take away, or detain such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding fourteen years, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour.

Whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest in any property of such woman, or in which she shall have any interest, or which shall come to her as such heiress, &c. ; and if any such marriage shall have taken place such property shall upon conviction be settled in such manner as the Court of Chancery shall, upon information at the suit of the Attorney-General, appoint.

54. Whosoever shall by force take away or detain against her will any woman of any age with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony. *Punishment*: The same as in sect. 53.

55. Whosoever shall unlawfully take, or cause to be taken, any unmarried girl under the age of sixteen, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 34.

#### *Child-stealing.*

56. Whosoever shall unlawfully, either by force or fraud, lead or take away or decoy, or entice away or detain any child under the age of fourteen with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been so led, &c., away, or so detained, shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding seven, and not less than [five] years, or imprisonment not exceeding two years, with or without hard labour, and if a male under sixteen, with or without whipping. *Proviso*: No person who shall have claimed any right to the possession of such child, or shall be the mother, or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child or taking such child out of the possession of any person having the lawful charge thereof.

*Bigamy.***Bigamy.**

57. Whosoever, being married, shall marry any other person during the life of the former husband or wife shall be guilty of felony. *Punishment*: The same as in sect. 56, with the exception of whipping. Any such offence may be tried in any county or place where the offender shall be apprehended, or be in custody, as if committed there. *Proviso*: Nothing in this section shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for seven years, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by any court of competent jurisdiction.

*Attempt to procure Abortion.***Administering drugs or using instruments to procure abortion.**

58. Every woman being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, *Punishment*: The same as in sect. 11.

**Procuring drugs, &c., to cause abortion.**

59. Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 20.

*Concealing the Birth of a Child.***Concealment of birth.**

60. If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour. *Punishment*: The same as in sect. 34. *Proviso*: If any person tried for the murder of any child shall be acquitted thereof, the jury, in case it shall so appear in evidence, may find that the child had recently been born, and that such person did by some secret disposition of the dead body of such child endeavour to conceal the birth thereof, and such person may be

convicted as if upon an indictment for the concealment of the birth.

*Unnatural Offences.*

61. Whosoever shall be convicted of the abominable crime of Sodomy, &c. buggery, committed either with mankind or with any animal, shall be liable at the discretion of the court to be kept in penal servitude for life, or not less than ten years.

62. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour. *Punishment:* The same as in Sect. 23.

63. Definition of carnal knowledge.

*Making Gunpowder to Commit Offences, and Searching for the same.*

64. Whosoever shall knowingly have in his possession, or make or manufacture any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit any of the felonies in this Act mentioned, shall be guilty of a misdemeanour. *Punishment:* At the discretion of the court, imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under sixteen, with or without whipping.

Making or having gunpowder, &c., with intent to commit felony under Act.

65. Power to justices of the peace, on reasonable cause assigned, to issue warrants to search for such gunpowder, &c., or any such machine, &c., as mentioned in sect. 64.

Search warrants.

*Other Matters.*

66. Similar section to sect. 104 of 24 & 25 Vict. c. 96 (p. 569).

67. In the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned not exceeding two years with or without hard labour; and every accessory after the fact to murder shall be liable to be punished as mentioned in sect. 11, with the exception of solitary confinement; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanour punishable under this Act, shall be liable to be proceeded against as a principal offender.

Punishment of principals in second degree and accessories.

71. Similar section to sect. 117 of 24 & 25 Vict. c. 96 (p. 569) except as to any felony punishable with death.

Miscellaneous provisions.

73. Guardians and overseers may be required to prosecute in certain cases.

74. On conviction on indictment of an assault, the court may order the offender to pay the prosecutor's costs, and in default such offender may be imprisoned not exceeding three months in addition to the term of imprisonment, if any, to which he may be sentenced for the offence.

75. Such costs may be levied by distress under order of the court.

### *The Merchandise Marks Act, 1862.*

25 & 26 VICT. c. 88.

Forging, &c.,  
trade marks.

2. Persons forging or falsely applying trade marks with intent to defraud, shall be guilty of a misdemeanour, and shall forfeit to the Queen every article belonging to them to which they shall have so applied such trade marks, and the instruments used for such purpose.

Applying forged  
trade marks.

3. Persons applying forged trade marks with intent to defraud to vessels, cases, wrappers, &c., in or with which any article is sold, or intended to be sold, shall be guilty of a misdemeanour, and shall forfeit to the Queen every such article to which such trade marks shall be so applied, and also every such vessel, case, wrapper, &c., in the possession or power of such persons, and the instruments used for such purpose.

Exposure with  
forged mark.

4. Persons knowingly selling or exposing for sale any article with a forged or false trade mark shall pay a sum equal to the value of the article, and a further sum not exceeding 5*l.*, and not less than 10*s.*

Additions, &c.

5. Additions to and alterations of trade marks with intent to defraud shall be deemed forgeries within the meaning of this Act.

Demand of  
person exposing  
article with  
forged mark  
for sale.

6. Any person having sold, or having exposed for sale, any article with a forged or false trade mark, shall be bound, on demand in writing, to give information in writing as to where he procured it within forty-eight hours after demand. Power to justices of the peace to summon persons refusing to give such information, and if satisfied that the demand ought to be complied with, to order such information to be given within a time to be appointed. Penalty for not obeying such order 5*l.*

False indica-  
tions and state-  
ments.

7. Persons marking any false indication as to quantity, &c., upon any article, with intent to defraud, shall pay a sum equal to the value of the article, and a further sum not exceeding 5*l.*, and not less than 10*s.*

8. Persons knowingly selling or exposing any article for sale with a false statement as to quantity, &c., shall pay a sum not exceeding 5*l.*, and not less than 5*s.*

9. *Proviso*: It shall not be an offence to apply to any article names or words known to be used for indicating particular classes of manufactures.

11. A conviction under this Act shall not affect any civil remedy; but no evidence which any person shall be compelled to give shall be admissible in evidence against such person, in support of any indictment for a misdemeanour, or of any proceeding under the provisions of this Act. Effect of conviction.

13. Every person who shall aid, abet, counsel, or procure the commission of any offence, which is by this Act made a misdemeanour, shall also be guilty of a misdemeanour. Abettors.

14. Every person convicted of a misdemeanour under this Act shall be liable, at the discretion of the court, and as the court shall award, to suffer such punishment by imprisonment for not more than two years, with or without hard labour, or by fine, or both by imprisonment with or without hard labour and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied. Punishment.

15. As to recovery of penalties.

18. No person shall commence any proceeding for the recovery of any penalty, or procuring the conviction of any offender as aforesaid after the expiration of three years from the offence, or one year after the discovery thereof by the person proceeding. Miscellaneous provisions.

19 and 20. See these sections *ante*, p. 234.

21. In suits at law or in equity against persons for using forged trade marks the court may order the articles to be destroyed, and may award an injunction.

22. Persons aggrieved by such forgeries, &c., as aforesaid may recover damages.

### *The Companies Act, 1862.*

25 & 26 Vict. c. 89.

166. If any director, officer, or contributory of any company wound-up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be guilty of a misdemeanour. *Punishment*: Imprisonment not exceeding two years, with or without hard labour. Destruction, &c. of papers by officer or contributory.

167. Where any order is made for winding-up a company by the court, or subject to the supervision of the court, if it appear in the course of such winding-up that any past or present Prosecution of officer or member.

director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators, or the liquidators (as the case may be) to institute and conduct a prosecution for such offence, and may order the costs to be paid out of the assets of the company.

168. Under similar circumstances in the case of voluntary winding-up, the liquidators, with the previous sanction of the court, may prosecute such offender, and the costs shall be a first charge on the assets.

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*An Act for the Prevention of Poaching.*

25 & 26 VICT. c. 114.

"Game."

1. The word "game" shall, as regards this Act, include hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black, or moor game, and eggs of grouse, black, or moor game.

Power to constables to search suspected persons, &c.

2. Power to constables to search any person whom they may have good cause to suspect of coming from any land where he shall have unlawfully been in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constables shall have good cause to suspect that any such game or any such article or thing is being carried by any such person; and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article, or thing; and such constables shall apply to a justice of the peace for a summons, citing such person to appear before two justices of the peace; and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on conviction, pay a sum not exceeding 5*l.*, and shall forfeit such game, guns, &c., and if no conviction takes place, the game or any such article or thing as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized.

6. As to appeal.

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*An Act for the further Security of the Persons of Her Majesty's Subjects from Personal Violence.*

26 & 27 VICT. c. 44.

Whipping.

By this Act, where any person is convicted of a crime under

sect. 43 of the 24 & 25 Vict. c. 96 (p. 555), or under sect. 21 of the 24 & 25 Vict. c. 100 (p. 605), the court may, in addition to the punishment awarded by the said sections or any part thereof, direct that the offender be once, twice, or thrice privately whipped, subject to the provisions in the Act contained.

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*Misappropriation by Servants Act.*

26 & 27 Vict. c. 103.

1. Servants taking their masters' corn or other food contrary to orders, for the purpose of giving the same to their masters' horses or other animals, shall not be guilty of felony, but shall, on conviction before two justices, at their discretion, either be imprisoned with or without hard labour not exceeding three months, or else shall forfeit and pay not exceeding 5*l.*; and if such penalty be not paid either immediately after the conviction or within such period as the justices shall appoint, shall be imprisoned with or without hard labour not exceeding [two] months, or until payment. *Proviso*: The justices may dismiss the charge if they consider it expedient to do so. *Proviso*: If, upon the trial of any servant for feloniously taking from his master any corn or other food consumable by horses or other animals, such servant shall allege that he took the same under such circumstances as would constitute any offence punishable under this Act, and shall satisfy the jury thereof, the jury may return a verdict accordingly; and the court shall award such punishment as may be awarded by two justices as aforesaid.

Servants taking  
corn, &c., for  
horses, &c.

2. As to appeal.

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*The Penal Servitude Act, 1864.*

27 & 28 Vict. c. 47.

2. No person shall be sentenced to penal servitude in respect to any offence committed after the passing of this Act for less than five years, and where under any Act now in force a period of less than five years is the utmost sentence of penal servitude that can be awarded, a period of five years shall, in respect to any offence committed after the passing of this Act, in such Act be substituted for the less period; and where under any Act now in force a period of less or more than five years may be awarded as a sentence of penal servitude, the least sentence of penal servitude that can be awarded under that Act shall be a period of five years.

Penal servitude  
not to be for less  
than five years.



*Felony and Misdemeanour Evidence and Practice  
Act, 1865.*

28 VICT. c. 18.

Procedure on  
trial where pri-  
soner defended  
by counsel.

2. If any prisoner or defendant shall be defended by counsel the presiding judge shall, at the close of the case for the prosecution, ask the counsel for the prisoner or defendant whether he intends to adduce evidence, and if not, the counsel for the prosecution shall be allowed to address the jury a second time for the purpose of summing up the evidence against the prisoner or defendant; and upon every trial for felony or misdemeanour, whether the prisoner or defendant shall be defended by counsel or not, he or his counsel respectively shall be allowed to open his case and to examine such witnesses as he may think fit, and when the evidence is concluded, to sum up the evidence respectively.

3, 4, 5, 6, 7, 8. These sections are similar to sections 22, 23, 24, 25, 26, and 27 of the 17 & 18 Vict. c. 125 (*ante*, pp. 457, 458).

9. The word "counsel" applies to solicitors where they are allowed to appear.

*Criminal Law Amendment Act.*

30 & 31 VICT. c. 35.

Witnesses for  
accused person.

3. Before committal for trial, an accused person shall be asked by the justice or justices whether he desires to call witnesses, and, if so, their depositions are to be taken and transmitted with the depositions of the prosecutor to the court of trial.

5. If the witnesses for the accused person, bound by recognisance, appear at the trial, the court may allow their expenses.

Evidence of  
person danger-  
ously ill.

6. Power to a justice of the peace to take the statement on oath, or affirmation of a person dangerously ill, and not likely to recover, relating to an indictable offence, or to a person accused thereof; and if afterwards, upon the trial of the offender or offence to which the same relates, the person who made the statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or give evidence, it shall be lawful to read such statement in evidence for or against the accused, without further proof thereof, if the same purports to be signed by the justice before whom taken, and if it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person against whom it is proposed to be read, and that an opportunity was given for cross-examining the person making such statement.

7. Provisions for the prisoner being present at the taking of such statement.

8. The provisions of the 24 & 25 Vict. c. 66 (*ante*, p. 544), as to witnesses who object to be sworn, are extended to jurors so Jurors objecting to be sworn. objecting.

### *The Companies Act, 1867.*

30 & 31 Vict. c. 131.

34. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting so to be, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company under the Companies Act, 1862, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document, knowing the same to be forged or altered, with intent to defraud, shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude for life, or not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. Forging, &c., share warrants, &c.

35. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains, or endeavours to obtain, any such share or interest, or share warrant, or coupon, or receives, or endeavours to receive, any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony. *Punishment:* The same as in sect. 34. Personation of owner of share or interest in company.

36. Whosoever, without lawful authority or excuse (the proof whereof shall be on the party accused), engraves, or makes upon any plate, wood, stone, or other material, any share warrant or coupon, purporting to be issued or made by any particular company, in pursuance of this Act, or to be a blank share warrant or coupon, issued or made as aforesaid, or to be a part of such share warrant or coupon, or uses any such plate, &c., for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude not exceeding fourteen, and not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement. Unlawfully engraving, &c., share warrants &c.

*The Documentary Evidence Act, 1868.*

31 &amp; 32 VICT. c. 37.

4. If any person commits any of the offences following, viz. :—

Printing copy of  
proclamation,  
&c.

(1.) Prints any copy of any proclamation, order, or regulation, which falsely purports to have been printed by the Government printer, or tenders in evidence any copy of any proclamation, &c., which falsely purports to have been printed as aforesaid; or,—

Forging, &c.,  
certificate  
annexed to copy  
of proclamation.

(2.) Forges or tenders in evidence, knowing the same to have been forged, any certificate, by this Act authorised to be annexed to a copy of, or extract from any proclamation, &c.

he shall be guilty of felony. *Punishment*: Penal servitude for five years, or imprisonment not exceeding two years, with or without hard labour.

*Larceny and Embezzlement Act.*

31 &amp; 32 VICT. c. 116.

Larceny by  
partner.

1. If a member of a co-partnership, or one of two or more beneficial owners of any property, shall steal or embezzle the same, he shall be liable to be tried as if not a member of such co-partnership, or one of such beneficial owners.

*The Poor Law Amendment Act, 1868.*

31 &amp; 32 VICT. c. 122.

Order on hus-  
band.

33. An order may be made by justices in petty sessions upon a husband to maintain his wife, but may be revoked if sufficient cause shown.

Neglect by  
parent to pro-  
vide for child.

37. A parent neglecting to provide adequate good clothing, medical aid, or lodging for his child being in his custody, under the age of fourteen, whereby the health of such child shall have been or shall be likely to be seriously injured, shall, on conviction before two justices, be liable to be imprisoned not exceeding six months, with or without hard labour. Power to the justices to suspend such punishment on the offender being bound, with or without sureties, to come up for judgment when called upon.

*The Felony Act, 1870.*

33 &amp; 34 VICT. c. 23.

Forfeiture for  
treason and  
felony abolished.

1. No confession, verdict, inquest, conviction, or judgment of or for any treason or felony or *felo de se* shall any longer cause

attainder, forfeiture, or escheat, but this Act shall not affect forfeiture consequent upon outlawry.

2. If any person hereafter convicted of treason or felony shall at the time hold office under the Crown or other public employment, or any ecclesiastical benefice, or a place of emolument in any university, college, or other corporation, or be entitled to any pension out of any public fund, such office or employment shall become vacant and such pension cease, unless a free pardon shall be granted within two months after conviction or before the filling up of such office; and such person (until the period of his punishment shall have ended or such free pardon shall have been granted) shall continue incapable of holding any such office, or of exercising any right of suffrage.

Effect of conviction of felony of certain holders of offices.

By other sections:—

Miscellaneous provisions.

Persons convicted of treason or felony may be condemned in the costs of the prosecution (sect. 3).

Compensation not exceeding 100*l.* may be awarded for loss of property by means of felony (sect. 4).

Convicts are disabled from suing for or alienating property (sect. 8).

The Crown may appoint administrators of a convict's property, and it shall vest in them on appointment (sect. 9), and they may—

- (1.) Pay out of the property the costs of the prosecution and of carrying this Act into execution (sect. 13).
- (2.) Pay the debts or liabilities of the convict (sect. 14).
- (3.) Make compensation to persons defrauded by the criminal acts of the convict (sect. 15).
- (4.) Make allowances for the support of the family of the convict (sect. 16).

### *The Forgery Act, 1870.*

33 & 34 VICT. c. 58.

3. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any stock certificate or coupon, or any document purporting so to be, issued in pursuance of Part V. of the National Debt Act, 1870, or of any former Act, or demands or endeavours to obtain or receive any share or interest of or in any stock as defined in the said Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered certificate or coupon, or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, he shall be guilty of felony. *Punishment:* At the discretion of the court, penal servitude for life or not less than

Forging, &c., stock certificate, &c., issued under Part V. of National Debt Act, 1870.

five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Personation of  
owner of interest  
in such stock.

4. If any person falsely and deceitfully personates any owner of any share or interest of or in any such stock as aforesaid, or of any such stock certificate or coupon as aforesaid, and thereby obtains or endeavours to obtain any such stock certificate or coupon, or receives or endeavours to receive any money due to any such owner as if such person were the owner, he shall be guilty of felony. *Punishment*: The same as in sect. 3.

Engraving, &c.,  
such stock cer-  
tificates.

5. If any person, without lawful authority or excuse (the proof whereof shall lie on the party accused), engraves or makes on any plate, wood, stone, or other material any stock certificate or coupon purporting to be such as aforesaid, or to be such stock certificate or coupon as aforesaid in blank, or to be a part of such stock certificate or coupon as aforesaid, or uses any such plate, &c., for the making or printing of any such stock certificate, &c., or any part thereof respectively, or knowingly has in his custody or possession any such plate, &c., or knowingly offers, utters, disposes of, or puts off, or has in his custody or possession any paper on which any such blank stock certificate or coupon, or part thereof, is made or printed, he shall be guilty of felony. *Punishment*: At the discretion of the court, penal servitude not exceeding fourteen and not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging, &c.,  
certificate under  
Part VI. of  
National Debt  
Act, 1870.

6. If any person forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate or duplicate certificate required by Part VI. of the National Debt Act, 1870, or by any former like enactment, with intent in any of the cases aforesaid to defraud, he shall be guilty of felony. *Punishment*: The same as in sect. 3.

### *The Larceny (Advertisements) Act, 1870.*

33 & 34 VICT. c. 65.

Actions under  
s. 102 of 24 & 25  
Vict. c. 96.

3. Every action against the printer or publisher of a newspaper to recover a forfeiture under sect. 102 of the 24 & 25 Vict. c. 96 (*ante*, p. 568), shall be brought within six months after the forfeiture is incurred, and not until the assent in writing of the Attorney-General or Solicitor-General has been obtained.

### *The False Personation Act, 1874.*

37 & 38 VICT. c. 36.

False personation  
with intent  
to obtain  
property.

1. If any person shall falsely and deceitfully personate any person, or the heir, executor, or administrator, wife, widow, next

of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property, he shall be guilty of felony. *Punishment:* Penal servitude for life, or not less than five years, or imprisonment not exceeding two years, with or without hard labour, and with or without solitary confinement.

2. Nothing herein shall prevent any person from being proceeded against and punished under any other Act, or at common law, in respect of an offence (if any) punishable as well under this Act as under any other Act, or at common law. Not to prevent other proceedings.

8. No offence against this Act shall be prosecuted or tried at any court of general or quarter sessions of the peace. Jurisdiction.

### *The Falsification of Accounts Act, 1875.*

38 & 39 VICT. c. 24.

1. If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years. Punishment for falsification of accounts, &c.

2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded. Intention to defraud sufficient indictment.

3. This Act shall be read as one with the Act of the twenty-fourth and twenty-fifth of Her Majesty, chapter ninety-six. Act to be read with 24 & 25 Vict. c. 96.

4. This Act may be cited as the Falsification of Accounts Act, 1875. Short title.

### *The Offences against the Person Act, 1875.*

38 & 39 VICT. c. 94.

3. Whosoever shall unlawfully and carnally know and abuse any girl under the age of twelve years shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term Abusing girl under twelve.

not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Abusing girl  
above twelve  
and under  
thirteen.

4. Whosoever shall unlawfully and carnally know and abuse any girl, being above the age of twelve years and under the age of thirteen years, whether with or without her consent, shall be guilty of a misdemeanour<sup>(a)</sup>, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

24 & 25 Vict.  
c. 100.

5. This Act shall be deemed to be incorporated with the 24 & 25 Vict. c. 100 (*ante*, p. 602).

### *Law of Evidence Amendment Act.*

40 & 41 VICT. c. 14.

Evidence of  
defendants ad-  
mitted in certain  
cases.

On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

### *Prosecution of Offences Act, 1879.*

42 & 43 VICT. c. 22.

Appointment  
and duty of  
Director of  
Public Prosecu-  
tions.

2. A Secretary of State may from time to time appoint an officer to be called the Director of Public Prosecutions, with such salary, not exceeding 2000*l.* per annum, as he may, with the consent of the Treasury, fix.

It shall be the duty of the Director of Public Prosecutions, under the superintendence of the Attorney-General, to institute, undertake, or carry on such criminal proceedings (whether in the Court for Crown Cases Reserved, before sessions of Oyer and Terminer or of the Peace, before magistrates or otherwise), and to give such advice and assistance to chief officers of police, clerks to justices, and other persons, whether officers or not, concerned in any criminal proceeding respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under this Act, or may be directed in a special case by the Attorney-General.

The regulations under this Act shall provide for the Director of Public Prosecutions taking action in cases which appear to be

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<sup>(a)</sup> Rape is felony, notwithstanding this section: (*Reg. v. Josiah Ratchiffe*, 47 L. T. 388.)



of importance or difficulty, or in which special circumstances or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such director necessary to secure the due prosecution of an offender, and shall also fix the areas or districts for which the assistants of such director shall respectively be appointed and act.

3. A Secretary of State may from time to time appoint such assistants, not exceeding six, as may, with the sanction of the Treasury, seem necessary for the proper execution of his duties by the Director of Public Prosecutions, and may assign them their duties. And the Attorney-General, with the approval of a Secretary of State, may from time to time appoint such clerks, messengers, and servants as may, with the sanction of the Treasury, seem necessary for the proper execution of his duties by the Director of Public Prosecutions, and may assign them their duties.

Establishment  
of office of  
Director of  
Public Prosecu-  
tion.

There shall be paid to such assistants, clerks, messengers, and servants such salaries or remuneration as may be from time to time fixed by the Attorney-General, with the approval of a Secretary of State and the consent of the Treasury.

The said salaries and remuneration, and the salary of the Director of Public Prosecutions, and all expenses incurred in the execution of the duties of that director, shall be paid out of moneys provided by Parliament.

No assistant director of public prosecutions shall be appointed for any longer term than seven years; but any person vacating his office by reason of this provision may be reappointed.

4. A person appointed to be the Director of Public Prosecutions, or to be an assistant of such director, shall be either a barrister-at-law or a solicitor of the Supreme Court of Judicature, and shall be in the case of the director in actual practice and of not less standing than ten years, and in the case of an assistant in actual practice and of not less standing than seven years.

Qualification of  
Director of  
Public Prosecu-  
tions and of  
assistants.

Neither the Director of Public Prosecutions nor any assistant of any such director shall directly or indirectly practise in their profession except in the discharge of their duties under this Act.

5. Where the Director of Public Prosecutions gives notice to any justice or coroner that he has instituted, or undertaken, or is carrying on any criminal proceeding, such justice and coroner shall at the time and in the manner prescribed by the regulations under this Act, or directed in any special case by an order of the Attorney-General, transmit to the said director every recognisance, information, certificate, inquisition, deposition, document, and thing which is connected with the said proceeding, and which the justice or coroner is required by law to deliver to the proper officer of the court in which the trial is to be had, and

Delivery of  
recognisances,  
inquisitions, &c.,  
to Director of  
Public Prosecu-  
tions.

the said director shall, subject to the regulations under this Act, cause the same to be delivered to the said proper officer of the court, and shall be under the same obligation, on the same payment, to deliver to an applicant copies thereof as the said justice, coroner, or officer.

It shall be the duty of every clerk to a justice or to a police court to transmit, in accordance with the regulations under this Act, to the Director of Public Prosecutions, a copy of the information and of all depositions and other documents relating to any case in which a prosecution for an offence instituted before such justice or court is withdrawn or is not proceeded with within a reasonable time.

A failure on the part of any justice or coroner to comply with this section shall be deemed to be a failure to comply with the said requirement to deliver to the proper officer of the court, and any clerk to a justice or to a police court failing to comply with this section shall be liable to the same penalty to which a justice or coroner is liable for such failure as aforesaid.

If Director  
abandon prose-  
cution aggrieved  
parties may  
proceed.

6. Where any criminal proceeding has been instituted or undertaken by the Director of Public Prosecutions, any person having the right to institute and carry on such proceedings may, if he have good cause for so doing, show, by affidavit to any judge of the High Court of Justice, that such Director of Public Prosecutions has abandoned such proceedings, or has neglected duly to carry on the same; and such judge, after hearing such Director of Public Prosecutions, may give such directions as to the mode in which such proceedings shall be continued by such person so applying, or by the said Director of Public Prosecutions, as to such judge shall appear right.

Saving as to  
private prosecu-  
tors, and binding  
over persons to  
prosecute.

7. Nothing in this Act shall interfere with the right of any person to institute, undertake, or carry on any criminal proceeding.

Where any criminal proceeding is instituted, undertaken, or carried on by the Director of Public Prosecutions, such director shall not be bound over to prosecute or conduct such proceeding, or required to give security for costs; and it shall not be necessary to bind over any person to prosecute or conduct such proceeding; and if any person is so bound over, or has given security for costs, he shall, upon the Director of Public Prosecutions undertaking the case, be released from such obligation, and the security shall be deemed to have been cancelled, and the Director of Public Prosecutions shall be liable to costs in lieu of such person.

The prosecution of an offender by the Director of Public Prosecutions shall, for the purpose of enabling a person to obtain a restitution of property, or obtaining, exercising, or enforcing any right, claim, or advantage whatsoever, have the same effect

as if such person had been bound over to prosecute and had prosecuted the offender, subject to this proviso, that such person shall give all reasonable information and assistance to the said director in relation to the prosecution.

8. The Attorney-General, with the approval of the Lord Regulations. Chancellor and a Secretary of State, may from time to time make, and when made rescind, vary, and add to, regulations for carrying into effect this Act.

The draft of all such regulations proposed to be approved as aforesaid shall be laid before both Houses of Parliament and shall not be finally approved as aforesaid until the draft has lain before each House of Parliament for not less than forty days upon which such House has sat.

10. This Act shall come into operation on the 1st January, Commencement of Act. 1880.

### *Summary Jurisdiction Act, 1879.*

42 & 43 VICT. c. 49.

3. This Act shall come into operation on the 1st January, Commencement of Act. 1880.

#### *PART I.—Court of Summary Jurisdiction.*

4. Subject as in this Act mentioned, and notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this Act, or under any other Act, whether past or future, to impose imprisonment or to impose a fine for an offence punishable on summary conviction, that court may, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof. Mitigation of punishment by court.

And where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognisance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the court may dispense with any such requirement or any part thereof.

And where a court of summary jurisdiction has authority under an Act of Parliament other than this Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that court, when adjudicating on such offence, may, notwithstanding, if the court think that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding 25*l.*, and not being of such an amount as will subject the offender under the provisions of this Act, in default

of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorizing the said imprisonment.

Scale of imprisonment for non-payment of money.

5. The period of imprisonment imposed by a court of summary jurisdiction under this Act, or under any other Act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale ; that is to say,

Where the amount of the sum or sums of money adjudged to be paid by a conviction as ascertained by the conviction	The said period shall not exceed
Does not exceed 10s.....	Seven days.
Exceeds 10s. but does not exceed 1l. ....	Fourteen days.
Exceeds 1l. but does not exceed 5l....	One month.
Exceeds 5l. but does not exceed 20l. ....	Two months.
Exceeds 20l. ....	Three months.

And such imprisonment shall be without hard labour, except where hard labour is authorised by the Act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorised by the said Act.

Sum recoverable by summary order to be recoverable as a civil debt.

6. Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction shall be recovered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise ; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise.

Instalments and security for payment.

7. A court of summary jurisdiction, by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things ; namely,—  
(1.) Allow time for the payment of the said sum ; and  
(2.) Direct payment to be made of the said sum by instalments ; and  
(3.) Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that court, or of such other court of summary jurisdiction, or such person as may be specified by that court, security with or

without a surety or sureties for the payment of the said sum or of any instalment thereof, and such security may be given and enforced in manner provided by this Act.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A court of summary jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court; and every person to whom any such sum or instalment is paid, where not the clerk of the court of summary jurisdiction, shall as soon as may be account for and pay over the same to that clerk.

8. Where a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs. Costs in case of small fines.

9. (1.) Where a recognisance is conditioned for the appearance of a person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before a court of summary jurisdiction, or in a proceeding in a court of summary jurisdiction, such court, if the said recognisance appears to the court to be forfeited, may declare the recognisance to be forfeited, and enforce payment of the sum due under such recognisance in the same manner as if the sum were a fine adjudged by such court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction: Enforcing of recognisance by court of summary jurisdiction.

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said court of summary jurisdiction, or any other court of summary jurisdiction, for the same county, borough, or place, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the court for the future performance of the condition of the recognisance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the court may think just.

(2.) Where a recognisance conditioned to keep the peace or to be of good behaviour, or not to do or commit some act or thing, has been entered into by any person as principal or surety before a court of summary jurisdiction, that court or any other court of

summary jurisdiction acting for the same county, borough, or place, upon proof of the conviction of the person bound as principal by such recognisance of any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognisance to be forfeited, and adjudge the persons bound thereby, whether as principals or sureties, or any of such persons, to pay the sums for which they are respectively bound.

(3.) Except where a person seeking to put in force a recognisance to keep the peace or to be of good behaviour, by notice in writing, requires such recognisance to be transmitted to a court of general or quarter sessions, the recognisances to which this section applies shall be dealt with in manner in this section mentioned, and notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to general or quarter sessions.

(4.) All sums paid in respect of a recognisance declared or adjudged by a court of summary jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such court, and shall be paid and applied by him in the manner in which fines imposed by such court, in respect of which fines no special appropriation is made, are payable and applicable.

Summary trial  
of children for  
indictable  
offences, unless  
objected to by  
parent or  
guardian.

10. (1.) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment.

Provided that—

- (a.) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and
- (b.) Where imprisonment is awarded, the term shall not in any case exceed one month; and
- (c.) Where a fine is awarded, the amount shall not in any case exceed forty shillings; and
- (d.) When the child is a male the court may, either in addition to or instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2.) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing

of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view so far as is practicable of securing his attendance at the hearing of the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4.) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

11. (1.) Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the first column of the First Schedule to this Act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case; and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months; and if the young person is a male, and in the opinion of the court under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person.

Summary trial with consent of young persons (juvenile offenders).



(2.) For the purpose of proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3.) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

Summary trial  
with consent of  
adult.

12. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the second column of the First Schedule to this Act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case; and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding twenty pounds.

For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

Summary conviction on plea of guilty of adult.

13. (1.) Where a person who is an adult is charged before a court of summary jurisdiction with an indictable offence, which is specified in the first column of the First Schedule to this Act, and is not comprised in the second column of that schedule, and the court at any time during the hearing of the case become satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and further are satisfied (either after such a demand as is provided by this Act or otherwise) that

the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, then the court shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2.) The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or plead not guilty, he will be dealt with in the usual course; with a statement, if the court thinks such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily or in the usual course, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury. The court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(3.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a justice constituting or forming part of the court, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same.

14. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule to this Act, and it appears to the court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily in pursuance of this Act.

*Restriction on summary dealing with adult charged with indictable offence.*

Restriction on  
punishment of  
child for sum-  
mary offence.

15. A child on summary conviction for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, shall not be imprisoned for a longer period than one month nor fined a larger sum than forty shillings.

Power of court  
to discharge  
accused without  
punishment.

16. If upon the hearing of a charge for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, the court of summary jurisdiction think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment—

(1.) The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable; or,

(2.) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable:

Provided that this section shall not apply to an adult convicted in pursuance of this Act of an offence of which he had pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction.

Right to claim  
trial by jury in  
case of offences  
otherwise  
triable sum-  
marily.

17. (1.) A person when charged before a court of summary jurisdiction with an offence, in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury; and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence; and if the person so charged is committed for trial, or bailed to appear for trial, shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

(2.) A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him to the following effect: "You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by

a jury; do you desire to be tried by a jury?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of being dealt with summarily, and of the assizes or sessions (as the case may be) at which such person will be tried by a jury.

(3.) This section shall not apply to the case of a child unless the parent or guardian of the child is present; but the court shall ascertain whether the parent or guardian of the child is present, and if he is, shall address the above question to such parent or guardian, and the claim under this section may be made by such parent or guardian.

18. A court of summary jurisdiction shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months.

Imprisonment in cases of cumulative sentences not to exceed six months.

19. Where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to a court of general or quarter sessions against such conviction or order:

Appeal from summary conviction to general or quarter sessions.

Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognisance, or for the giving of any security.

20. (1.) A case arising under this Act, or under any other Act, whether past or future, shall not be heard, tried, determined, or adjudged by a court of summary jurisdiction, except when sitting in open court.

Court of summary jurisdiction to sit at a petty sessional or occasional court-house, &c.

(2.) Open court means a petty sessional court-house or an occasional court-house.

(3.) A petty sessional court-house means a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such court-house or place; and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, means any such court-house or place.

(4.) An occasional court-house means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house.

(5.) The justices of a petty sessional division of a county shall from time to time, at a sessions of which notice has been given to every justice of such division, appoint police stations or other places other than the petty sessional court-house, to be used as occasional court-houses, at which cases may be heard, tried, determined, and adjudged, and they may from time to time at such sessions as aforesaid vary any police station or place so appointed, and shall cause public notice to be given in such manner as they think expedient of every police station or place for the time being appointed to be used as an occasional court-house.

(6.) A court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house is in this Act referred to as a petty sessional court.

(7.) Where a case arising under this Act, or under any other Act, whether past or future, is heard, tried, determined, and adjudged by a court of summary jurisdiction sitting in an occasional court-house, the period of imprisonment imposed by the conviction or order of such court shall not exceed fourteen days, and the sum adjudged to be paid by the conviction or order of such court shall not exceed twenty shillings; and a justice of the peace when sitting alone in a petty sessional court-house shall not have power to impose any greater term of imprisonment or adjudge any larger sum to be paid than is above mentioned.

(8.) An indictable offence dealt with summarily in pursuance of this Act shall not be heard, tried, determined, or adjudged except by a petty sessional court sitting on some day appointed for hearing indictable offences, of which public notice has been given in such manner as to the justices of the petty sessional division seems expedient, or at some adjournment of such court.

(9.) Any case arising under this Act, other than such indictable offence as aforesaid, and any case arising under any future Act which is triable by a court of summary jurisdiction, shall, unless it is otherwise prescribed, be heard, tried, determined, and adjudged by a court of summary jurisdiction consisting of two or more justices.

(10.) The Lord Mayor of the City of London and any alderman of the said city, and any metropolitan or borough police magistrate or other stipendiary magistrate, when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace, shall, for the purposes of this Act, be deemed to be a court of summary jurisdiction consisting of two or more justices, and also to be a court of summary jurisdiction sitting in a petty sessional court-house, and is in this Act included in the expression "petty sessional court."

(11.) A court of summary jurisdiction, when not a petty sessional court, may, without prejudice to any other power of adjournment which the court may possess, adjourn the hearing of any case to the next practicable sitting of a petty sessional court in the same manner in all respects as a justice is authorised to adjourn the hearing of a case under section sixteen of the Summary Jurisdiction Act, 1848.

21. (1.) A court of summary jurisdiction to which application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

Special provisions as to warrants of commitment for non-payment of sums of money, and as to warrant of distress.

(2.) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

(3.) Where a person is adjudged by the conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, to pay such sum of money, and on default of payment of such sum a warrant of distress is authorised to be issued, and it appears to the court of summary jurisdiction to which application is made to issue such warrant that such person has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, such court, instead of issuing such warrant of distress, may, if it think fit, order the said person on non-payment of the said sum to be imprisoned for any period not exceeding the period for which he is liable under such conviction or order to be imprisoned in default of sufficient distress.

(4.) Where on application to a court of summary jurisdiction to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction of any court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, or for default of sufficient distress to satisfy any such sum, it appears to the court to whom the application is made that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied

balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.

*Supplemental Provisions.*

Register.

22. The clerk of every court of summary jurisdiction is to keep a register of the convictions, &c., as in this section fully mentioned.

Regulations as to securities taken in pursuance of Act.

23. (1.) A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the clerk of the court or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such security may be provided by entry thereof in the register under this Act of proceedings of a court of summary jurisdiction or otherwise as may be directed by such rule.

(2.) Any sum which may become due in pursuance of a security under this Act from a surety shall be recoverable summarily, in manner directed by this Act with respect to a civil debt, on complaint by a constable or by the clerk of the court directing such security to be given, or by some other person authorised for the purpose by that court or any other court of summary jurisdiction for the same county, borough, or place.

(3.) A court of summary jurisdiction may enforce payment of any sum due by a principal in pursuance of a security under the Act which appears to such court to be forfeited, in like manner as if that sum were adjudged by a court of summary jurisdiction to be paid as a fine which the statute provides no mode of enforcing, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged by a court of summary jurisdiction to be paid as a civil debt; provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this Act, and subject thereto by the court authorising the security or by any court to whom application is made for the issue of the warrant.

(4.) Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs,



charges, and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due to him from the principal, and may be recovered before a court of summary jurisdiction in manner directed by this Act with respect to the recovery of a civil debt which is recoverable summarily.

(5.) Where security is given under this Act for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

24. (1.) Where a person is charged before a court of summary jurisdiction with an indictable offence, with which a court of summary jurisdiction has or may have under the circumstances in this Act mentioned power to deal summarily, the court before which such person is charged without prejudice to any other power that it may possess,—

Power of court of summary jurisdiction to remand for indictable offences.

(a.) may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused; and

(b.) if such court is not at the time of the charge a petty sessional court, and the court think the case proper to be dealt with summarily, may adjourn the case and remand the person accused until the next practicable sitting of a petty sessional court.

(2.) A person may be remanded under this section in like manner in all respects as a person accused of an indictable offence may be remanded under section 21 of 11 & 12 Vict. c. 42, with this addition, that where he is remanded to the next practicable sitting of a petty sessional court he may be remanded for more than eight days.

25. The power of a court of summary jurisdiction, upon complaint of any person, to adjudge a person to enter into a recognisance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised by an order upon complaint, and the Summary Jurisdiction Acts shall apply accordingly, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

Procedure before court of summary jurisdiction in case of sureties to keep the peace.

The court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court, six months, and if the court be a court of summary jurisdiction other than a petty sessional court, fourteen days.

26. Where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties, any petty sessional court for the same county, borough, or place may, on

Power of petty sessional court with respect to varying order for sureties.

application made to them in manner directed by a rule made in pursuance of this Act, by him or by some one acting on his behalf, inquire into the case of the person so committed; and if upon new evidence produced to such court or proof of a change of circumstances the court think, having regard to all the circumstances of the case, that it is just so to do, they may reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court may think just.

Regulations as to indictable offences dealt with summarily.

27. Where an indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily,—

- (1.) The procedure shall, until the court assume the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence; but when and so soon as the court assume the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of the Acts relating to offences punishable on summary conviction shall apply accordingly; and
- (2.) The evidence of any witness taken before the court assumed the said power need not be taken again; but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination; and
- (3.) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment, and the court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried if he had been tried on indictment; and
- (4.) Where the court have assumed the power to deal with the case summarily, and dismissed the information, they shall, if required, deliver to the person charged a copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence; and
- (5.) The conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent or guardian, and in the case of any other person of the consent of such person, to be tried by a court of summary jurisdiction; and
- (6.) The order of dismissal shall be transmitted to and filed by the clerk of the peace in like manner as the conviction

is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused.

28. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this Act by a court of summary jurisdiction, the expenses of the prosecution of such offence shall be payable in manner provided by this section.

*Costs of prosecution of indictable offences dealt with summarily.*

The court dealing summarily with any such indictable offence may, if it seem fit, grant to any person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court may deem reasonable for his expenses, trouble, and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made by a Secretary of State with respect to the payment of costs in the case of indictable offences; and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace for filing the convictions, depositions, and other documents required to be filed by him under this Act, and such other expenses as are by law payable when incurred before a commitment for trial; and every certificate so granted shall have the effect of an order of court for the payment of the expenses of a prosecution for felony, made in pursuance of the 7 Geo. 4, c. 64, and the Acts amending the same; and the amount named in such certificate shall be paid in like manner as the expenses specified in such order would have been paid.

29. Power to Lord Chancellor to make rules.

30. Power to provide a petty sessional court-house.

## PART II.—*Amendment of Procedure.*

31. Where any person is authorised by this Act or by any future Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

*Procedure on appeal to general or quarter sessions.*

(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or, if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the

day on which the decision was given upon which the conviction or order was founded; and

- (2.) The appellant shall, within the prescribed time, or if no time is prescribed, within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal and of the general grounds of such appeal; and
- (3.) The appellant shall, within the prescribed time, or if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognisance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal; or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognisance think it expedient, instead of entering into a recognisance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient; and
- (4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognisance may, if the court think fit, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody; and
- (5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

- (6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order ; and
- (7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

32. Where a person is authorised by any past Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations contained in this Act with respect to an appeal to a court of general or quarter sessions :

*Application of provisions respecting appeals to quarter sessions to appeals under prior Acts.*

Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act.

Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded.

33. (1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case, setting forth the facts of the case and the grounds on which the proceeding is questioned, and, if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

*Appeal from court of summary jurisdiction by special case.*

(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same; and, subject as aforesaid, the 20 & 21 Vict. c. 43, shall, so far as it is applicable, apply to any special case stated under this section as if it were stated under that Act:

Provided that nothing in this section shall prejudice the statement of any special case under that Act.

Summary  
orders.

34. (1.) Where a power is given by any future Act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action which the court may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

(2.) A person making default in complying with an order of a court of summary jurisdiction in relation to any matter arising under any future Act other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed, may in the discretion of the court be ordered to pay a sum (to be enforced as a civil debt recoverable summarily under this Act) not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate twenty pounds.

Recovery of civil  
debts in court of  
summary juris-  
diction.

35. Any sum declared by this Act, or by any future Act, to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided as follows:

- (1.) A warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint; and
- (2.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of such court or of any other court of summary jurisdiction for the same county, borough, or place, that the person making default in payment of such civil debt, instalment, or costs either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same; and in any such case the court shall have the same power of imprisonment as a County Court would for the time being have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that court, but shall not have any greater power.

Proof of the means of the person making default may be given in such manner as the court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this Act in relation to the summoning and examination of witnesses, or if no such rules are in force, to the rules for the like purpose made in pursuance of the Employers and Workmen Act, 1875.

36. Where a court of summary jurisdiction for any county, borough, or place would have power to issue a summons to a witness if such witness were within the said county, borough, or place, and such witness is believed to be within some other county, borough, or place in England, such court may issue a summons to such witness in like manner as if such witness were within the jurisdiction of such court; and any court of summary jurisdiction for the county, borough, or place in which the witness may be, or be believed to be, may, on proof on oath, or such solemn declaration as provided by this Act, of the signature to the summons, indorse the summons, and the witness, on service of the summons so indorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and, in default, shall be liable to be apprehended or otherwise proceeded against, either in the county, borough, or place in which the summons was issued, or in that in which the witness may

*Summons of witness when out of the jurisdiction of a court of summary jurisdiction.*



happen to be, in manner directed by the Summary Jurisdiction Act, 1848, as if such witness had been duly summoned by a court of summary jurisdiction for the county, borough, or place in which such witness is apprehended or proceeded against.

Summons or  
warrant not  
avoided by death  
of justice, &c.

37. A warrant or summons issued by a justice of the peace under the Summary Jurisdiction Act, 1848, or any other Act, whether past or future or otherwise, shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office.

Bail of person  
arrested without  
a warrant.

38. A person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken into custody, and if it is not or will not be practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is so taken into custody, a superintendent or inspector of police, or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case; and, except where the offence appears to such superintendent, inspector, or officer to be of a serious nature, shall discharge the prisoner, upon his entering into a recognisance, with or without sureties, for a reasonable amount, to appear before some court of summary jurisdiction at the day, time, and place named in the recognisance.

Provisions as to  
proceedings, &c.

39. The following enactment shall apply to proceedings before courts of summary jurisdiction; (that is to say,)

- (1.) The description of any offence in the words of the Act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and
- (2.) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint; and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
- (3.) A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same; and
- (4.) A warrant of distress shall not be deemed void by reason

only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so, however, that if amends are tendered before action brought, and if the action is brought are paid into court in the action, and the plaintiff does not recover more than the sum so tendered and paid into court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs, to be taxed as between solicitor and client; and

- (5.) All forfeitures not pecuniary which are incurred in respect of an offence triable by a court of summary jurisdiction, or which may be enforced by a court of summary jurisdiction, may be sold or disposed of in such manner as the court having cognisance of the case or any other court of summary jurisdiction for the same county, borough, or place may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the Act on which the proceeding for the forfeiture is founded.

40. A writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court.

Case from  
quarter sessions  
without  
*certiorari*.

41. In a proceeding within the jurisdiction of a court of summary jurisdiction, without prejudice to any other mode of proof, service on a person of any summons, notice, process, or document required or authorised to be served, and the handwriting and seal of any justice of the peace or other officer or person on any warrant, summons, notice, process, or document, may be proved by a solemn declaration taken before a justice of the peace, or before a commissioner to administer oaths in the Supreme Court of Judicature, or before a clerk of the peace or a registrar of a County Court; and any declaration purporting to be so taken shall, until the contrary is shown, be sufficient proof of the statements contained therein, and shall be received in evidence in any court or legal proceeding, without proof of the signature or of the official character of the person or persons taking or signing the same; and the fee, if any, for taking such

Proof by declaration of service of process, handwriting, &c.

declaration shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this Act, and any such fee shall be costs in the matter or proceeding to which it relates.

The declaration may be in the form provided by a rule under this Act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

Recognisances  
taken out of  
court.

42. When a court of summary jurisdiction has fixed, as respects any recognisance, the amount in which the principal and the sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, need not be entered into before such court, but may, subject to any rules made in pursuance of this Act, be entered into by the parties before any other court of summary jurisdiction, or before any clerk of a court of summary jurisdiction, or before a superintendent or inspector of police or other officer of police of equal or superior rank, or in charge of any police station, or where any of the parties is in prison, before the governor or other keeper of such prison; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before a court of summary jurisdiction shall apply, as if the recognisance had been entered into before the said court as heretofore by law required.

Procedure on  
the execution of  
distress  
warrants.

43. The following regulations shall be enacted with respect to warrants of distress issued by a court of summary jurisdiction:

- (1.) A warrant of distress shall be executed by or under the direction of a constable; and
- (2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale; and where written consent is so given as aforesaid, the sale may be made in accordance with such consent; and
- (3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid; and
- (4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods the goods shall not, except with the consent in writing of the person against whom the dis-

tress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds; and

- (5.) Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds; and
- (6.) A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the clerk of the court of summary jurisdiction issuing the warrant; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any reasonable time to be appointed by the court, and to take a copy of such account; and
- (7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant; and
- (8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

44. Where any property has been taken from a person charged before a court of summary jurisdiction with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such court of summary jurisdiction of the fact of such property having been taken from the person charged and of the particulars of such property, and the court

Return of  
property taken  
from prisoner.

shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

Local jurisdiction of court under this Act.

45. Where a person is charged with an indictable offence mentioned in the First Schedule to this Act before a court of summary jurisdiction for any county, borough, or place, and the court have jurisdiction to commit such person for trial in such county, borough, or place, although the offence was not committed therein, such court shall also have jurisdiction to deal with the offences summarily in pursuance of this Act.

General provisions as to local jurisdiction of courts of summary jurisdiction.

46. For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act, whether past or future, the following provisions shall have effect:—

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more courts of summary jurisdiction, such offence may be tried by any one of such courts.

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts of summary jurisdiction, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court of summary jurisdiction, such offence may be tried by any one of such courts.

(3.) Where the offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court of summary jurisdiction through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the highway, road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts of summary jurisdiction, a person may be tried for such offence by any one of such courts.

(4.) Any offence which is authorised by this section to be tried by any court of summary jurisdiction may be dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court.

PART III.—*Definitions, Savings, and Repeal of Acts.**Special Definitions.*

47. The provisions of this Act with respect to a sum adjudged to be paid by an order shall apply, so far as circumstances admit, to a sum in respect of which a court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum were a civil debt; and the provisions of this Act with respect to the hearing, trying, determining, and adjudging of a case by a court of summary jurisdiction when sitting in open court shall apply to the hearing, trying, determining, and adjudging by a court of summary jurisdiction of an application for the issue of any such warrant.

Application of Act to sums leviable by distress or payable under order.

The provisions of this Act with respect to the period of imprisonment to be imposed in respect of the non-payment of a sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum, shall apply to the period of imprisonment to be imposed in respect of the non-payment of any sum of money adjudged to be paid by an order of a court of summary jurisdiction or in respect of the default of a sufficient distress to satisfy any such sum, where such sum is not a civil debt nor enforceable as a civil debt.

48. As to clerk of court of summary jurisdiction.

49. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; (that is to say)

Special definitions for purposes of the Act.

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years:

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years:

The expression "adult" means a person who in the opinion of the court before whom he is brought is of the age of sixteen years or upwards:

The expression "person" includes a child, young person, and adult, and also includes a body corporate:

The expression "guardian," in relation to a child, includes any person who, in the opinion of the court having cognisance of any case in which a child is concerned, has for the time being the charge of, or control over such child:

The expression "prescribed" means prescribed or provided

by any Act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied :

The expression "past Act" means any Act passed before the commencement of this Act, exclusive of this Act :

The expression "future Act" means any Act passed after the commencement of this Act :

The expression "fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction :

The expression "county" includes any county, riding, division, parts, or liberty of a county having a separate court of quarter sessions :

The expression "borough" means a borough subject to the provisions of the Municipal Corporations Act, 1835, and the Acts amending the same :

The expression "local rate" means as respects any county, borough, or place, any county rate, borough rate, or other local rate out of which the costs of the prosecution of any felony committed within such county, borough, or place are payable :

The expressions "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by any order" respectively include any costs adjudged to be paid by the conviction or order as the case may be, of which the amount is ascertained by such conviction or order.

51. As to application of the Summary Jurisdiction Acts to future Acts.

52. Savings as to Army, Navy, Marine, and Militia Acts.

53. Application of Summary Jurisdiction Acts to the Post Office, Inland Revenue, and Customs.

Application and  
construction of  
Act.

54. This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums in like manner as if an order in any such matter, or so enforceable, were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy.

Nothing in this Act shall authorise a court of summary jurisdiction to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of a minimum amount.



This Act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenor of such Acts respectively, and save as aforesaid shall be subject to the exceptions specified in section thirty-five of the Summary Jurisdiction Act, 1848 :

Provided, that the provisions contained in sections thirty-three and thirty-four of the Summary Jurisdiction Act, 1848, as to the Acts relating to the police in the metropolis and in the city of London, and relating to the powers of justices within the metropolitan police district, shall not apply to or restrict the operation of this Act.

FIRST SCHEDULE.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

First Column. Young Persons consenting and Adults pleading Guilty.	Second Column. Adults consenting.
1. Simple larceny.	1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.
2. Offences declared by any Act for the time being in force to be punishable as simple larceny.	2. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured, or otherwise dealt with by the offender does not in the opinion of the court before whom the charge is brought exceed forty shillings.
3. Larceny from or stealing from the person.	3. Larceny from or stealing from the person, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.
4. Larceny as clerk or servant.	4. Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.
5. Embezzlement by a clerk or servant.	5. Embezzlement by a clerk or servant, where the value of the whole of the property alleged to have been embezzled does not in the opinion of the court before whom the charge is brought exceed forty shillings.
6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the 91st and 95th sections of the Larceny Act, 1861 (24 & 25	6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the 91st and 95th sections of the Larceny Act, 1861 (24 & 25 Vict. c. 96), or in either of such sections, where the value of the whole of the property alleged

FIRST SCHEDULE—*continued.*

First Column. Young Persons consenting and Adults pleading Guilty.	Second Column. Adults consenting.
<p>Vict. c. 96), or in either of such sections.</p> <p>7. Aiding, abetting, counselling or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny, or stealing from the person, or of larceny as a clerk or servant.</p> <p>8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.</p>	<p>to have been received does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p> <p>7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p> <p>8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.</p>

This Act shall apply to any of the following offences when alleged to have been committed by a young person in like manner as if such offence were included in the first column of the schedule; that is to say,

- (1.) To any offence in relation to railways and railway carriages mentioned in sects. 32 and 33 of 24 & 25 Vict. c. 100; and
- (2.) To any offence relating to railways mentioned in sect. 35 of 24 & 25 Vict. c. 97; and
- (3.) To any indictable offence, either under the Post Office Laws or prosecuted by Her Majesty's Postmaster-General; and for the purpose of this provision the expression "Post Office Laws" has the same meaning as it has in the 7 Will. 4 & 1 Vict. c. 36, and the Acts amending the same.

*Prevention of Crime Act, 1879.*

42 & 43 Vict. c. 42.

Penal servitude. By sect. 1 of this Act, so much of sect. 2 of the Penal Servitude Act, 1864, as enacts that the least sentence of penal servitude after a previous conviction of felony shall be a period of seven years is repealed so far as regards any sentence awarded after the commencement of this Act.

*Criminal Law Amendment Act, 1880.*

43 &amp; 44 VICT. c. 45.

2. It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of *thirteen* to prove that he or she consented to the act of indecency.

Indecent assault.

*Summary Jurisdiction (Process) Act, 1881.*

44 &amp; 45 VICT. c. 24.

4. Subject to the provisions of this Act, any process issued under the Summary Jurisdiction Acts, may, if issued by a court of summary jurisdiction in England, and indorsed by a court of summary jurisdiction in Scotland, or issued by a court of summary jurisdiction in Scotland, and indorsed by a court of summary jurisdiction in England, be served and executed within the jurisdiction of the indorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the indorsing court.

Service of process of English court in Scotland and of Scotch court in England.

*The Newspaper Libel and Registration Act, 1881.*

44 &amp; 45 VICT. c. 60. (a)

3. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the fiat of the Director of Public Prosecutions.

Fiat of Public Prosecutor necessary.

4. A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the court, if of opinion, after hearing such evidence, that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Inquiry by court of summary jurisdiction.

5. If the court of summary jurisdiction is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the court shall

Summary conviction.

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(a) For sects. 1 and 2. see *ante*, p. 176.

cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily the court may summarily convict him and adjudge him to pay a fine not exceeding 50*l.* Sect. 27 of the Summary Jurisdiction Act, 1879 (*a*), shall, so far as consistent with the tenor thereof, apply to every such proceeding.

6. Offences under this Act shall be deemed offences within the 22 & 23 Vict. c. 17 (An Act to prevent vexatious indictments for certain misdemeanours).

Registration of proprietors.

7. The Board of Trade may authorise registration of the names of a portion only of the proprietors of a newspaper.

8. A register of proprietors of newspapers shall be established.

9—14. As to annual returns to be made by printers and publishers of newspapers.

15. Copies of entries in and extracts from the register certified by the registrar(*b*) or his deputy, or under the official seal of the registrar, are to be received in evidence.

### *Explosive Substances Act, 1883.*

46 Vict. c. 3.

Punishment for causing explosion likely to endanger life or property.

2. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the minimum term allowed by law), or to imprisonment with or without hard labour for a term not exceeding two years.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

3. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously—

(*a.*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; or

(*b.*) makes or has in his possession or under his control any explosive substance with intent by means thereof to

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(*a*) See *ante*, p. 640.

(*b*) The registrar is the registrar for the time being of joint-stock companies, or such person as the Board of Trade may for the time being authorise in that behalf.

endanger life, or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to endanger life or cause serious injury to property in the United Kingdom,

shall, whether any explosion does or not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labour for a term not exceeding two years, and the explosive substance shall be forfeited.

4. (1.) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years with or without hard labour, and the explosive substance shall be forfeited.

Punishment for making or possession of explosive under suspicious circumstances.

(2.) In any proceeding against any person for a crime under this section, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

5. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this Act, shall be guilty of felony, and shall be liable to be tried and punished for that crime, as if he had been guilty as a principal.

Punishment of accessories.

6. (1.) Where the Attorney-General has reasonable ground to believe that any crime under this Act has been committed, he may order an inquiry under this section, and thereupon any justice for the county, borough, or place in which the crime was committed or is suspected to have been committed, who is authorised in that behalf by the Attorney-General, may, although no person may be charged before him with the commission of such crime, sit at a police court, or petty sessional or occasional court house, or police station in the said county, borough, or place, and examine on oath concerning such crime any witness appearing before him, and may take the deposition of such witness, and, if he see cause, may bind such witness by recognisance to appear and give evidence at the next petty sessions, or when called upon within three months from the

Inquiry by Attorney-General, and apprehension of absconding witnesses.

date of such recognisance ; and the law relating to the compelling of the attendance of a witness before a justice, and to a witness attending before a justice and required to give evidence concerning the matter of an information or complaint, shall apply to compelling the attendance of a witness for examination and to a witness attending under this section.

(2.) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself ; but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in the case of an indictment or other criminal proceeding for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

(3.) A justice who conducts the examination under this section of a person concerning any crime shall not take part in the committing for trial of such person for such crime.

(4.) Whenever any person is bound by recognisance to give evidence before justices, or any criminal court, in respect of any crime under this Act, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognisance to give evidence, unless in the meantime he produces sufficient sureties. Provided that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

No prosecution  
except by leave  
of Attorney-  
General—Pro-  
cedure and  
saving.

7. (1.) If any person is charged before a justice with any crime under this Act, no further proceeding shall be taken against such person without the consent of the Attorney-General, except such as the justice may think necessary by remand, or otherwise, to secure the safe custody of such person.

(2.) In framing an indictment the same criminal act may be charged in different counts as constituting different crimes under this Act, and upon the trial of any such indictment the prosecutor shall not be put to his election as to the count on which he must proceed.

(3.) For all purposes of and incidental to arrest, trial, and punishment, a crime for which a person is liable to be punished under this Act, when committed out of the United Kingdom, shall be deemed to have been committed in the place in which such person is apprehended or is in custody.

(4.) This Act shall not exempt any person from any indictment or proceeding for a crime or offence which is punishable at

common law, or by any Act of Parliament other than this Act, but no person shall be punished twice for the same criminal act.

8. As to search for and seizure of explosive substances.

### *Payment of Wages in Public-houses Prohibition Act, 1883.*

46 & 47 VICT. c. 31.

2. In this Act the expression "workman" means any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act 1872, or the Metalliferous Mines Regulation Act, 1872, applies. Definition of workmen.

3. From and after the passing of this Act no wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman *bonâ fide* employed by him. No wages to be paid within public-house.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.

4. Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts. Penalties.

### *Trial of Lunatics Act, 1883.*

46 & 47 VICT. c. 38.

2. (1.) Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for Special verdict where accused found guilty, but insane at date of act or



omission  
charged, and  
orders there-  
upon.

his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

(2.) Where such special verdict is found, the court shall order the accused to be kept in custody as a criminal lunatic, in such place and in such manner as the court shall direct, till Her Majesty's pleasure shall be known; and it shall be lawful for Her Majesty thereupon, and from time to time, to give such order for the safe custody of the said person during pleasure, in such place and in such manner as to Her Majesty may seem fit.

(3.) In all such cases any two justices of the peace of the county, city, or place where such person shall have been tried, or shall be kept in custody, shall have the like power as is given by the Act of the third and fourth years of Her present Majesty, chapter fifty-four, in the cases therein mentioned, to inquire into and ascertain the last legal settlement of such person, and also to make the like order or orders for the payment of such person's maintenance and other charges as therein mentioned.

(4.) All provisions in any existing Act or in any rules or orders made in pursuance of any existing Act, having reference to a person or persons acquitted on the ground of insanity, shall apply to a person or persons in respect of whom a special verdict is found under this Act.

### *Counterfeit Medal Act, 1888.*

46 & 47 VICT. c. 45.

Punishment for  
selling medals  
resembling  
current coin.

2. If any person without due authority or excuse (the proof whereof shall lie on the person accused)—

Makes or has in his possession for sale, or offers for sale, or sells

Any medal, cast, coin, or other like thing made wholly or partially of metal or any metallic combination and resembling in size, figure, and colour any of the Queen's current gold or silver coin, or having thereon a device resembling any device on any of the Queen's current gold or silver coin, or being so formed that it can by gilding, silvering, colouring, washing, or other like process, be so dealt with as to resemble any of the Queen's current gold or silver coin,

He shall be guilty, in England and Ireland, of a misdemeanour.

and in Scotland of a crime and offence, and on being convicted, shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

3. "The Queen's current gold or silver coin" includes any gold or silver coin coined in or for any of Her Majesty's mints, or lawfully current by virtue of any proclamation or otherwise in any part of Her Majesty's dominions, whether within the United Kingdom or otherwise. Interpretation.

*The Revenue Act, 1883.*

46 & 47 VICT. c. 55.

17. Sections 76 to 82, both inclusive, of the Bills of Exchange Act, 1882 (a), and section 25 of 24 & 25 Vict. c. 98 (b) shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque. 24 & 25 Vict.  
c. 98; 45 & 46  
Vict. c. 61.

Provided that nothing in this Act shall be deemed to render any such document a negotiable instrument.

For the purpose of this section Her Majesty's Paymaster-General is deemed to be a banker, and the public officers drawing on him are deemed customers.

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(a) *Ante*, pp. 29-31.

(b) *Ante*, p. 591.

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